

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. _____

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
DAVID J. LUBBEN,)
)
Defendant.)

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against defendant David J. Lubben (“Lubben”):

SUMMARY OF ALLEGATIONS

1. From no later than October 1996 through 2005, defendant David J. Lubben, then General Counsel and Secretary of UnitedHealth Group Inc. (“UnitedHealth” or the “Company”), enriched himself and others at the Company by participating in a stock options backdating scheme at UnitedHealth, in which hindsight was used to pick advantageous grant dates for the Company’s nonqualified stock options. On many occasions, the options’ purported grant dates coincided with, or were close to, dates of historically low annual and quarterly closing prices for UnitedHealth’s common stock. UnitedHealth used the closing price of the Company’s common stock on those days as the strike price of the options that were granted. As a result of Lubben’s conduct and the conduct of others at the Company, UnitedHealth routinely made grants of

disguised and undisclosed in-the-money stock options to its officers and employees. Various individuals, including Lubben or others acting at his direction, created false or misleading Company records indicating that the grants had occurred on the earlier dates when the Company's stock price had been at a low.

2. Many UnitedHealth option grants contradicted the Company's public disclosures that it only granted options at strike prices not less than the fair value of its common stock on the date of grant, and contravened certain of UnitedHealth's stock option plans that prohibited in-the-money stock options.

3. Lubben personally received numerous backdated grants of options, representing as many as 3,867,784 shares of UnitedHealth stock on a split-adjusted basis. He exercised more than 1,791,648 of those options for approximately \$1,115,810 in gains attributable to improper backdating.

4. Because of the undisclosed backdating, UnitedHealth filed with the Commission and disseminated to investors quarterly and annual reports, proxy statements and registration statements that Lubben knew, or was reckless in not knowing, contained materially false and misleading statements pertaining to the true grant dates of UnitedHealth options. This caused investors to believe, falsely, that the Company granted options with strike prices equal to the fair market value of UnitedHealth stock on the date of grant. In addition, contrary to Generally Accepted Accounting Principles ("GAAP"), UnitedHealth did not record or disclose the compensation expenses it incurred as a result of the in-the-money portions of the option grants. Consequently, UnitedHealth materially understated its compensation expenses and materially overstated its quarterly and annual pretax earnings and earnings per share in its financial statements. On March 6, 2007, UnitedHealth restated its financial statements and disclosed

cumulative pre-tax errors in stock-based compensation accounting, which were material to the Company's financial statements for each year from 1994 through 2005 and totaled \$1.526 billion for that period under Accounting Principles Board Opinion No. 25 ("APB 25"). UnitedHealth also announced that its financial statements for this period, and all earnings and press releases and similar communications issued by the Company for such period and the related reports of the Company's independent registered public accounting firm, should no longer be relied upon.

5. By engaging in the acts alleged in this Complaint, Lubben: (1) violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13b2-1, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-9, and 240.16a-3]; (2) aided and abetted UnitedHealth's violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]; and (3) aided and abetted violations of Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. § 240.16a-3] by UnitedHealth officers who reported to the Commission stock option grants.

6. The Commission seeks a judgment from the Court: (a) enjoining Lubben from engaging in future violations of the federal securities laws; (b) requiring him to disgorge, with prejudgment interest, ill-gotten gains derived from his violations; (c) requiring him to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]; and (d) barring him from acting as an officer

or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)].

JURISDICTION AND VENUE

7. The Court has jurisdiction of this civil enforcement action pursuant to Section 22(a) of the Securities Act and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 77v(a), 78u(d), 78(u)(e), and 78aa]. Lubben, directly or indirectly, made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

8. Venue lies in the District of Minnesota pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa]. Defendant Lubben resides in Minnesota, UnitedHealth is a Minnesota corporation, and many of the acts alleged herein occurred in Minnesota.

THE PARTIES

9. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Section 20(b) of the Securities Act and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 78u(d) and 78u(e)].

10. Defendant Lubben, age fifty-six (56), lives near Minneapolis, Minnesota. Lubben served as UnitedHealth's General Counsel from approximately October 1996 until October 15, 2006. While General Counsel, Lubben reviewed and approved periodic reports, registration statements, and proxy statements the Company filed with the Commission and disseminated to investors.

FACTS

A. Background

11. During Lubben's tenure, UnitedHealth relied heavily on stock options as a competitive tool to recruit, retain, and compensate employees in lieu of higher cash compensation. Each option gave the grantee the right to buy one share of UnitedHealth common stock from the Company at a set price, called the "exercise" or "strike" price, on a future date after the option vested. The option was "in-the-money" whenever the trading price of UnitedHealth's common stock exceeded the option's strike price. The option was "at-the-money" whenever the trading price of UnitedHealth's common stock and the strike price were the same. The option was "underwater" or "out-of-the-money" whenever the trading price of UnitedHealth's common stock was less than the strike price.

12. Throughout the relevant time period, UnitedHealth accounted for stock options using the intrinsic method described in APB 25. Under APB 25, UnitedHealth was required to record as an expense on its financial statements the "intrinsic value" of a stock option on its "measurement date." The measurement date, as defined by APB 25, was the first date on which the following information was known: (i) the number of options that an individual employee is entitled to receive, (ii) the identity of the employee receiving the options, and (iii) the strike price. Options that were in-the-money on the measurement date had intrinsic value, and the difference between its strike price and the quoted market price were to have been recorded as compensation expense to be recognized over the vesting period of the option. Options that were at-the-money or out-of-the-money on the measurement date did not need to be expensed.

13. Lubben knew or was reckless in not knowing that APB 25 required UnitedHealth to record an expense if it granted employees in-the-money stock options.

B. UnitedHealth's Option Plans and Public Disclosures about Stock Options

14. In its filings with the Commission for at least fiscal years 1994 through 2005, UnitedHealth routinely represented that it complied with APB 25, and its financial statements reflected that the Company had not recognized compensation cost for its employee stock options. For example, in its 2002 Annual Report UnitedHealth stated: "we do not recognize compensation expense in connection with employee stock option grants because we grant stock options at exercise prices not less than the fair value of our common stock on the date of grant."

15. Beginning in approximately 2002, UnitedHealth granted millions of stock options pursuant to the Company's shareholder-approved 2002 Stock Incentive Plan (the "2002 Plan"). The 2002 Plan prohibited UnitedHealth from granting stock options with strike prices of less than the stock's fair market value on the date of grant.

C. The Backdating Scheme

16. From no later than 1996 through 2005, Lubben intentionally or recklessly disregarded and contravened UnitedHealth's public disclosures about stock options and, starting in 2002, provisions of the 2002 Plan, by participating in a scheme to look back and choose or recommend, with the benefit of hindsight, *purported grant dates that coincided with the dates of low closing prices for UnitedHealth stock, resulting in in-the-money options.*

17. As part of this backdating scheme, UnitedHealth retrospectively priced "interim grants" to newly hired employees, including employees hired in connection with companies acquired by UnitedHealth. These interim grants routinely were priced shortly after the end of the quarter or month in which the hire or acquisition occurred. The purported date of the grant was that which corresponded to the lowest share price between the date of the offer letter, employment, or acquisition and the end of the quarter or month in which the event took place.

This policy was approved by Lubben, along with others, was reduced to writing no later than 2000, and was refined in approximately 2002.

18. During Lubben's tenure at UnitedHealth, the Company granted approximately 42 million split-adjusted shares of in-the-money interim grants, while recording zero compensation expense under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by approximately \$78 million under APB 25 as a result of accounting errors for these backdated interim grants.

19. Also as part of this backdating scheme, UnitedHealth retrospectively priced "Mass grants." Mass grants were broad-based grants made once or twice per year to one or more categories of UnitedHealth employees, including thousands of middle and senior managers and top officers with ownership reporting obligations under Section 16 of the Exchange Act ("Section 16 grants") [15 U.S.C. § 78p(a)], which included Lubben. William W. McGuire, M.D. ("McGuire"), UnitedHealth's Chairman and CEO while Lubben was General Counsel, usually determined the strike price for mass grants. For non-Section 16 mass grants, McGuire was authorized by the Company's applicable stock option plans to determine the date of the grant and the strike price. For Section 16 grants, the Compensation Committee approved grant dates and strike prices chosen by McGuire.

20. Like the interim grants described above in paragraph 17, McGuire looked back over a window of time and selected the purported grant date for mass grants. Usually, this window opened when McGuire first began contemplating a mass grant and closed around the next Compensation Committee meeting. But the size of the window was not fixed or consistent—it could be as long as four to six months, or as short as a week or two. However

long the window, mass grants were often priced at or very near the lowest point in UnitedHealth's quarterly stock price.

21. During Lubben's tenure through 2005, McGuire initiated at least than 23 separate mass grants of hundreds of millions of split-adjusted shares, while zero compensation expense was recorded by the Company under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by approximately \$374 million under APB 25 as a result of these backdated mass grants.

22. Lubben knew, or was reckless in not knowing, that McGuire priced mass grants with the benefit of hindsight, and assisted McGuire's actions in several ways. Lubben participated in discussions of option prices and dates, prepared or obtained stock price charts used in connection with discussions of option prices and dates, and facilitated communications between McGuire and the Compensation Committee whereby backdated grants were recommended and approved. In addition, Lubben and other UnitedHealth officers and employees, acting at his direction or with his knowledge, routinely prepared false or misleading official grant authorization documents indicating that the selection of the strike price for mass grants and interim grants occurred on the purported grant date, which date usually was earlier than when the selection had actually occurred and earlier than when the final documents were prepared or signed. These inaccurate and misleading documents consisted of Certificates signed by McGuire authorizing grants ("CEO Certificates"), and Written Actions and meeting minutes of the Compensation Committee. The inaccurate stock option grant information reflected in these authorizing documents concealed the real measurement date under APB 25, misled UnitedHealth's external auditors, and directly caused UnitedHealth to file false and misleading financial statements. UnitedHealth routinely provided copies of these documents directly to

UnitedHealth's auditors. The inaccurate date and price data from these documents also was entered into a software application called Equity Edge, which UnitedHealth used to record and account for employee stock options. Equity Edge invariably calculated zero compensation expense under APB 25 because the strike price on the purported grant date of the option always equaled the fair market value of UnitedHealth's stock on that date. The Company regularly provided its auditors inaccurate options data from Equity Edge.

23. As a result of the foregoing, UnitedHealth's books and records falsely and inaccurately reflected the dates of option grants, the Company's stock-based compensation expenses, and the Company's financial condition. As a result, on March 6, 2007, UnitedHealth restated its financial statements and disclosed cumulative pre-tax errors in stock-based compensation accounting totaling \$1.526 billion under APB 25. UnitedHealth's stock option accounting errors, including those directly or indirectly caused by Lubben, were material. UnitedHealth's financial statements for fiscal years 1996 through 2005, which Lubben reviewed as General Counsel, also falsely represented that UnitedHealth followed APB 25 and that it did not grant in-the-money options.

24. Additionally, Lubben and others at the Company were responsible for devising and/or maintaining UnitedHealth's inadequate system of internal accounting controls for the Company's stock option practices, which included the use of CEO Certificates and Written Actions and meeting minutes of the Compensation Committee. In 2006, UnitedHealth disclosed that the Company had identified a significant deficiency in its controls relating to stock option plan administration and accounting for and disclosure of stock option grants.

25. From 1996 through 2005, Lubben received 3,867,784 split-adjusted UnitedHealth stock options. Most or all of these options were backdated. Lubben has exercised and sold

1,791,648 of these backdated options for an in-the-money gain of more than \$1,115,810.

Lubben also received nearly \$287,500 in incentive-based cash bonuses in 2005 and 2006 tied to earnings per share targets that UnitedHealth would not have achieved under financial statements restated due to errors in stock-based compensation accounting.

26. Prior to 2003, Lubben reported his stock option grants pursuant to Section 16 of the Exchange Act [15 U.S.C. § 78p(a)] on Commission Forms 4 and 5 that misstated the options' grant dates and corresponding strike prices. As General Counsel, Lubben also prepared, approved or signed Forms 4 and 5 filed on behalf of various other Section 16 officers of UnitedHealth that contained false or misleading statements with regard to the grant dates and strike prices of their options.

FIRST CLAIM

(Violations of Securities Act Section 17(a))

27. The Commission realleges paragraphs 1 through 26.

28. Lubben, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in the offer or sale of securities, and with knowledge, recklessness, or negligence: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or 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; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of UnitedHealth securities.

29. By engaging in the conduct alleged above, Lubben violated Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2), and (3)].

SECOND CLAIM

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

30. The Commission realleges paragraphs 1 through 29.

31. Lubben, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

32. By engaging in the conduct alleged above, Lubben violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

THIRD CLAIM

(Violations of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1)

33. The Commission realleges paragraphs 1 through 32.

34. Lubben, directly or indirectly, knowingly circumvented or knowingly failed to implement a system of internal accounting controls at UnitedHealth subject to Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], knowingly falsified books, records and accounts at the Company subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and caused to be falsified, such books, records and accounts.

35. By engaging in the conduct alleged above, Lubben violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1].

FOURTH CLAIM

(Violations of Exchange Act Section 14(a) and Exchange Act Rule 14a-9)

36. The Commission realleges paragraphs 1 through 35.

37. Lubben, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, knowingly, recklessly or negligently solicited proxies by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts which were necessary in order to make the statements made not false or misleading or which were necessary to correct statements in earlier false or misleading communications with respect to the solicitation of proxies for the same meeting or subject matter.

38. By engaging in the conduct alleged above, Lubben violated Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-9].

FIFTH CLAIM

(Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3)

39. The Commission realleges paragraphs 1 through 38.

40. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. § 240.16a-3] require officers, directors and beneficial owners of more than ten percent of any class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] to file a report with the Commission disclosing any change of his or her beneficial ownership of those securities. Lubben filed false or misleading reports disclosing changes in his

beneficial ownership of UnitedHealth securities that he was required to file as an officer of the Company.

41. By engaging in the conduct alleged above, Lubben violated Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. § 78p(a); 17 C.F.R. § 240.16a-3].

SIXTH CLAIM

(Aiding and Abetting Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3)

42. The Commission realleges paragraphs 1 through 41.

43. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. § 240.16a-3] require officers, directors and beneficial owners of more than ten percent of any class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] to file a report with the Commission disclosing any change of his or her beneficial ownership of those securities. Lubben signed, prepared, directed, approved and filed false or misleading reports disclosing changes in the beneficial ownership of UnitedHealth securities of other UnitedHealth officers that they were required to file as officers of the Company. Lubben knowingly or recklessly gave substantial assistance to the other UnitedHealth officers in their violations of Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. § 78p(a); 17 C.F.R. § 240.16a-3].

44. By engaging in the conduct alleged above, Lubben aided and abetted violations of Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. § 78p(a); 17 C.F.R. § 240.16a-3] by various UnitedHealth Section 16 reporting persons.

SEVENTH CLAIM

*(Aiding and Abetting Violations of Exchange Act
Section 13(a) and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder)*

45. The Commission realleges paragraphs 1 through 44.

46. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11, and 240.13a-13], require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

47. UnitedHealth filed with the Commission and disseminated to investors false and misleading quarterly and annual reports in violation of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. Lubben knowingly or recklessly gave substantial assistance to UnitedHealth in its violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

48. By engaging in the conduct alleged above, Lubben aided and abetted UnitedHealth's violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 13a-13].

EIGHTH CLAIM

(Aiding and Abetting Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B))

49. The Commission realleges paragraphs 1 through 48.

50. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

51. UnitedHealth violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)]. Lubben knowingly or recklessly gave substantial assistance to UnitedHealth in its failure to make and keep accurate books, records and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

52. By engaging in the conduct alleged above, Lubben aided and abetted UnitedHealth's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Lubben from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13b2-1, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-9, and 240.16a-3]; and aiding and abetting violations of Section 13(a), 13(b)(2)(A), 13(b)(2)(B), and 16(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78p(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 16a-3 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.16a-3];

II.

Order Lubben to disgorge all ill-gotten gains obtained by virtue of the conduct alleged herein, and to pay prejudgment interest thereon;

III.

Order Lubben to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)];

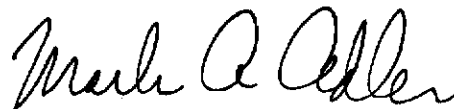
IV.

Bar Lubben from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)]; and

V.

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act.

Dated: December ²²____, 2008
Washington, D.C.



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