



the market and thereby created a false appearance of market activity, and did not accurately reflect the supply and demand for the stocks he was trading.

3. Leslie also engaged in an unlawful “free-riding” scheme, in which he induced Charles Schwab & Co., Inc. (“Schwab”) to unwittingly assume the risks of his trading by misrepresenting or concealing the material fact that he was financing purchases in his cash account with the anticipated proceeds from the sale of the very same securities. In so doing, Leslie violated Regulation X by willfully causing Schwab to extend him credit in violation of Regulation T, promulgated by the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), because he obtained, received, and enjoyed the beneficial use of extensions of credit for the purpose of purchasing and carrying securities: (1) without there being sufficient funds in his cash account and without his intending in good faith promptly to make full cash payment in his relevant cash account when payment was due; and (2) by placing sell orders for such securities prior to making payment for the purchases of said securities.

4. By his conduct, Leslie violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and Section 7(f) of the Exchange Act, and Section 17(a) of the Securities Act of 1933 (“Securities Act”), and Regulation X, [12 C.F.R. § 224.3], promulgated by the Federal Reserve Board. Unless permanently enjoined, Leslie will continue to engage in such acts and practices.

5. The Commission seeks an injunction against future violations and civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §§ 77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 78u(d)(3)].

**JURISDICTION**

6. This Court has jurisdiction pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act [15 U.S.C. Sections §§ 77t(b), 77t(d)(1), and 77v(a)], and Sections 21(d)(1), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(e), and 78aa].

**THE DEFENDANT**

7. David J. Leslie, age 36, is a self-employed trader. Leslie has never been registered or licensed with the Commission or the NASD. He resides in Marietta, Georgia.

**FACTS**

**Wash Sales Scheme**

**Background**

8. Leslie's wash sales scheme involved trades between a margin account he maintained at CyberTrader, Inc. and four cash accounts maintained at Schwab. These four cash accounts were IRA accounts, and were in the name of Leslie, his father, his mother, and his brother, respectively. Leslie was solely responsible for trading in the five accounts.

9. Wash sales are transactions involving no change in beneficial ownership. Matched orders are orders for the purchase/sale of a security that are entered with the knowledge that orders of substantially the same size, at substantially the same time and place, have been or will be entered by the same or different persons for the sale/purchase of such security. The purpose of Leslie's wash sales scheme was (i) to avoid trading restrictions in his cash accounts, (ii) to avoid margin calls in his margin account, (iii) for

simplicity and convenience in moving monies between the five accounts, and (iv) to have more buying power in his margin account.

10. Leslie pursued his wash sales scheme from at least December 20, 2002 through October 8, 2003, conducting wash sales or matched orders in at least four different stocks: Acusphere, Inc.; AsiaInfo Holdings, Inc.; Commercial Capital Bancorp, Inc.; and Vista Care Corporation (“VSTA”). In all, Leslie made at least 200 wash trades or matched orders as part of his wash sales scheme.

Wash Sales or Matched Orders by David Leslie

11. The majority of Leslie’s wash sales or matched orders were executed in the after-hours market, the period between the U.S. regular market’s 4:00 p.m. close and the 9:30 a.m. opening the next day. Leslie consciously chose to conduct his wash sales or matched orders in the after-hours market to avoid competing market activity that could be executed against the matching limit orders he devised.

12. In order to further minimize the chance that other market participants would execute against his limit orders, Leslie frequently executed wash sales or matched orders at a price that was outside the existing national best bid and offer spread.

13. An example of Leslie’s wash sales scheme is illustrated by his trading in the securities of Acusphere, Inc. (“ACUS”). On October 8, 2003, Leslie bought and sold shares of ACUS in 38 trades during the regular market hours at competitive market prices in his margin account at CyberTrader. Leslie had not invested in ACUS before October 8, 2003. At the close of the regular market hours, Leslie held 12,600 shares of ACUS in his margin account. That same day, in the after-hours market, Leslie effectively moved 11,000 shares of ACUS to his father’s cash account (5,000 shares), his mother’s cash account (2,000

shares), and his brother's cash account (4,000 shares) through matched orders.

a) After ACUS closed at \$14.03, Leslie submitted a limit order to sell 3,000 shares of ACUS in his margin account at \$14.59 and submitted a matching order to buy the 3,000 shares in his father's cash account at \$14.59. These orders were executed at 16:06:27.

b) Over the next hour, Leslie submitted a limit order to sell 2,000 shares of ACUS in his margin account at \$14.05 and submitted a matching order to buy the 2,000 shares in his father's cash account at \$14.05. These orders were executed at 17:03:34. The prevailing market price was \$14.

c) Over the next hour and a half, Leslie submitted a limit order to sell 2,000 shares of ACUS in his margin account at \$14.49 and submitted a matching order to buy the 2,000 shares in his mother's cash account at \$14.49. These orders were executed at 18:25:57. The prevailing market price was \$14.07.

d) Within seconds, Leslie submitted a limit order to sell 4,000 shares of ACUS in his margin account at \$14.49 and submitted a matching order to buy the 4,000 shares in his brother's cash account at \$14.49. These orders were executed at 18:26:55. The prevailing market price was \$14.07.

Leslie Was Told to Stop Engaging in Wash Sales or Matched Orders

14. On March 31, 2003, a representative from Schwab called Leslie and told him to stop engaging in "cross trades." The representative defined cross trading to Leslie and made it clear that he was not just referring to trades between accounts in Leslie's name but between any account in which Leslie had a beneficial interest and/or a power of

attorney. In response, Leslie told the representative that he was familiar with cross trading and that he “understand[s] the rules.” Despite this admonition, Leslie continued to engage in his wash sales scheme until at least October 8, 2003.

#### **Free-riding Scheme**

15. Regulation X covers borrowers, while Regulation T is directed to broker-dealers. Regulation X prohibits borrowers from willfully causing broker-dealers to extend credit in ways that violate Regulation T, and Regulation T prohibits a broker-dealer from extending any credit beyond the applicable payment period to a customer to effectuate either purchases or sales in a cash account. A broker is permitted to accept, in good faith, the representations of its customer that: (1) with respect to the purchase of securities, the customer has the money and will pay it at or before the time for settlement; or (2) with respect to the sale of securities, the customer owns the securities and will deposit them in the account promptly.

16. “Free-riding” is a practice where a customer places an order to purchase stocks without having sufficient funds to pay for these purchases and then uses part or all of the sale proceeds of that same stock to cover the purchase price. Free-riding violates Regulation T. When a customer free-rides, Regulation T requires the broker-dealer to “freeze” the account for a period of 90 days. When a 90-day freeze, or cash-up-front restriction, is placed on an account, a person may still trade, but that person must have funds on deposit to pay for any purchase prior to the broker-dealer executing the customer’s transaction.

17. Leslie engaged in his free-riding scheme from approximately July 2002 through July 2003. Through his free-riding scheme, Leslie violated Regulation X by

willfully causing Schwab to extend him credit in violation of Regulation T.

18. For example, on July 19, 2002, Leslie entered an order to purchase 400 shares of Unilever N.V. (“Unilever”) through a cash account he maintained at Schwab (“Schwab Account”). The purchase price of these securities exceeded the cash available to trade in his account. That same day, to pay for the 400 shares of Unilever, he liquidated some other stocks, which did not raise sufficient funds to pay for the Unilever purchase, and sold 200 of the 400 shares of Unilever he had purchased earlier in the day. Leslie failed to make any other payment within five days from the date of the purchase with funds that did not come in part from the sale of the Unilever stock. His failure to make payment resulted in a free-riding violation.

19. Also, on July 19, 2002, Leslie purchased 50 shares of Johnson and Johnson, Inc. (“Johnson and Johnson”). That same day, to pay for the 50 shares of Johnson and Johnson, he liquidated some other stocks, which did not raise sufficient funds to pay for the Johnson and Johnson purchase and sold all 50 shares of the Johnson and Johnson stock he had purchased earlier in the day. Leslie failed to make any other payment within five days from the date of the purchase with funds that did not come in part from the sale of the Johnson and Johnson stock. By his conduct, he committed a second free-riding violation that day.

20. Because Leslie failed to remedy these two free-riding violations, Schwab placed his account on a 90-day cash-up-front restriction. A person may still trade when a 90-day freeze, or cash-up-front restriction, is placed on an account but that person must have funds on deposit to pay for any purchase prior to the broker-dealer executing the customer’s transaction. Schwab notified Leslie of this restriction in a July 26, 2002 letter (“July 2002

Restriction”).

21. On September 11, 2002, while the July 2002 Restriction was in place, Leslie placed an order to purchase 1,000 shares of Gap, Inc. (“Gap”), the price of which exceeded the cash available to trade in his Schwab Account. Schwab executed that order and purchased 1,000 shares of Gap for his account. The next day, Leslie sold some other stocks, which did not raise sufficient funds to pay for the Gap purchase and all 1,000 shares of Gap he had induced Schwab to purchase on his behalf the previous day to cover the purchase of the Gap stock. Leslie failed to make any other payment within five days from the date of the purchase with funds that did not come in part from the sale of the Gap stock. His failure to make payment resulted in yet another free-riding violation.

22. Because Leslie committed another free-riding violation, Schwab placed his account on a permanent cash-up-front restriction. Schwab notified Leslie of this restriction in a September 17, 2002 letter (“September 2002 Restriction”).

23. On May 19, 2003, while the September 2002 Restriction was in place, Leslie placed an order to purchase 3,000 shares of Conexant Systems, Inc. (“Conexant”), which exceeded the cash available to trade in his Schwab Account, and which Schwab executed for his account. The next day, Leslie sold some other stocks, which did not raise sufficient funds to pay for the Conexant purchase and 2,000 of the 3,000 shares of Conexant he had induced Schwab to purchase on his behalf the previous day to cover the purchase of the Conexant stock. Leslie failed to make any other payment within five days from the date of the purchase with funds that did not come in part from the sale of the Conexant stock. His failure to make payment resulted in another free-riding violation.

24. Because Leslie committed another free-riding violation, Schwab once again



placed Leslie's account on a 90-day cash-up-front restriction. Schwab notified Leslie of this restriction in a May 31, 2003 letter ("May 2003 Restriction").

25. On July 1, 2003, while the May 2003 Restriction was in place, Leslie placed an order to purchase 9,834 shares of Mindspeed Technology, Inc. ("Mindspeed"), which exceeded the cash available to trade in his Schwab Account, and which Schwab executed for his account. The next day, Leslie sold some other stocks, which did not raise sufficient funds to pay for the Mindspeed purchase, and 5,000 of the 9,834 shares of Mindspeed he had induced Schwab to purchase on his behalf the previous day to cover the purchase of the Mindspeed stock. Leslie failed to make any other payment within five days from the date of the purchase with funds that did not come in part from the sale of the Mindspeed stock. Leslie's failure to make payment resulted in yet another free-riding violation.

26. Because Leslie committed another free-riding violation, Schwab again placed his account on a 90-day cash-up-front restriction. Schwab notified Leslie of this restriction in a July 21, 2003 letter.

**FIRST CLAIM FOR RELIEF**

**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]**

27. The Commission realleges and incorporates by reference paragraphs 1 through 26 above.

28. Defendant Leslie, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact 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 the purchaser.

29. By engaging in the conduct described above, the defendant violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**

**Violations of 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]**

30. The Commission realleges and incorporates by reference paragraphs 1 through 26 above.

31. Defendant Leslie, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities or a national securities exchange:

- a. employed devices, schemes, artifices to defraud;
- b. made untrue statements of a material fact or omitted 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
- c. engaged in acts, practices, or courses of business, which operated or would operate as a fraud or deceit upon other persons.

32. By engaging in the conduct described above, the defendant violated, and unless restrained and 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 FOR RELIEF**

**Violations of Section 7(f) of the Exchange Act [15 U.S.C. § 78g(f)]  
and Regulation X [12 C.F.R. § 224.1]**

33. The Commission realleges and incorporates by reference paragraphs 1 through 26 above.

34. Defendant Leslie, by engaging in the conduct described above, willfully obtained, received, or enjoyed the beneficial use of a loan or other extension of credit for the purpose of purchasing or carrying United States securities, without complying with the provisions of Regulation T, [12 C.F.R. § 220.1].

35. By engaging in the conduct described above, the defendant violated, and unless restrained and enjoined, will continue to violate, Section 7(f) of the Exchange Act [15 U.S.C. § 78g(f)] and Regulation X, [12 C.F.R. § 224.1], promulgated by the Federal Reserve Board.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court enter a judgment:

**I.**

Permanently enjoining defendant David J. Leslie from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 7(f) of the Exchange Act [15 U.S.C. § 78g(f)], and Regulation X [12 C.F.R. § 224.3], promulgated by the Federal Reserve Board;

**II.**

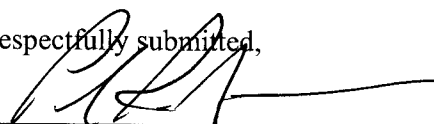
Ordering defendant David J. Leslie to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

**III.**

Granting such other relief as the Court may deem just and appropriate.

Dated: 12/15/, 2004

Respectfully submitted,



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