SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55313 / February 20, 2007

Admin. Proc. File No. 3-12260

In the Matter of the Application of

DONNER CORPORATION INTERNATIONAL,
JEFFERY L. BACLET,
VINCENT M. UBERTI, and
PAUL A. RUNYON

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDING

Violations of Securities Laws and Conduct Rules

Material Misstatements and Omissions of Material Fact

Violations of Public Communications Rules

Conduct Inconsistent With Just and Equitable Principles of Trade

Touting

Failure to Establish Adequate Written Supervisory Procedures

NASD member firm, president of firm, and registered representative of firm made material misstatements and omitted material facts in research reports issued by firm, failed to comply with standards for communications with the public, failed to disclose that firm received compensation for issuing reports, and failed to establish and maintain adequate written supervisory procedures or ensure written approval of reports by a principal of the firm. Held, association's findings of violation sustained and sanctions imposed sustained in part and vacated and remanded in part.

Registered representatives of NASD member firm formed non-member research firm and made material misstatements and omitted material facts in research reports issued by non-member firm. Held, association's findings of violation and sanctions imposed sustained.

APPEARANCES:

Jeffrey L. Baclet, pro se and for Donner Corporation International.

Vincent M. Uberti, pro se.

Paul A. Runyon, pro se.

Marc Menchel, Alan Lawhead, and Carla J. Carloni, for NASD.

Appeal filed: April 12, 2006
Last brief received: June 20, 2006

I.

Donner Corporation International ("Donner"), a former NASD member firm, 1/ Jeffrey L. Baclet, its former president, sole owner, financial and operations principal, and options principal, and Vincent M. Uberti and Paul A. Runyon, former registered representatives of Donner 2/ and subsequently of NASD member firm Lloyd, Scott, and Valenti ("Lloyd"), appeal from NASD disciplinary action. NASD found that Donner, Baclet, and Uberti violated Section 10(b) of the Securities Exchange Act of 1934, 3/ Exchange Act Rule 10b-5, 4/ and NASD Conduct Rules 2120, 2210, and 2110 5/ by preparing and disseminating twenty-five research reports containing

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1/ Donner changed its name to National Capital Securities, Inc. in May 2002. NASD cancelled the firm's membership in November 2002 for failing to pay fees. The firm withdrew its registration as a broker-dealer effective December 21, 2002.

2/ Central Registration Depository states that Uberti was registered with Donner as a general securities principal effective July 2001. Uberti asserts that he left Donner before that date and was never a Donner principal. See infra note 33.

3/ 15 U.S.C. § 78j.

4/ 17 C.F.R. § 240.10b-5.

5/ NASD Rule 2120 prohibits inducing the purchase or sale of a security by means of "any manipulative, deceptive or other fraudulent device or contrivance." Rule 2210 requires that public communications, including research reports, "be based on principles of fair

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material misstatements and omissions, 6/ and that Uberti and Runyon violated these provisions by issuing two research reports containing material misstatements and omissions through Lincoln Equity Research, LLC ("Lincoln"), a non-member firm formed by Uberti and Runyon.

NASD found further that Donner, Baclet, and Uberti violated NASD Rule 2110 with respect to research reports covering forty-eight issuers by failing to disclose, in violation of Section 17(b) of the Securities Act of 1933, 7/ that Donner received compensation for writing those reports. 8/ NASD also found that Donner and Baclet violated NASD Rules 3010, 2210, and 2110 by failing to establish and maintain adequate written supervisory procedures and failing to ensure written approval of Donner's research reports by a firm principal.

NASD expelled Donner from NASD membership, barred Baclet and Uberti in all capacities, and suspended Runyon for six months, fined Runyon $20,000, and ordered that Runyon requalify as a general securities principal and representative. We base our findings on an independent review of the record.

II.

A. The Donner Research Reports

Donner issued research reports on companies whose stock traded below $5 per share. Donner identified issuers and offered to write research reports in exchange for compensation. Issuing research reports constituted approximately seventy percent of Donner's business.

5/ (...continued)
dealing and good faith," "be fair and balanced," and "provide a sound basis" for evaluating a security. The rule prohibits making "any false, exaggerated, unwarranted or misleading statement or claim" in a research report or omitting "any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading." Rule 2110 requires members to "observe high standards of commercial honor and just and equitable principles of trade."

6/ NASD found that Uberti was liable for twenty-two of the twenty-five reports. Exhibit A to NASD's complaint listed the twenty-five reports containing alleged material misstatements and omissions and identified the twenty-two reports for which NASD charged Uberti with liability. Exhibit A is reproduced at the end of this opinion.

7/ 15 U.S.C. § 77q(b).

8/ NASD found that Uberti was liable for reports covering forty-four of the forty-eight issuers. Exhibit B to NASD's complaint listed the reports that failed to disclose the compensation received by Donner and identified the forty-four issuers for which NASD charged Uberti with liability. Exhibit B is reproduced at the end of this opinion.

Under a typical agreement between Donner and an issuer, Donner received an initial retainer fee of $2,500, $2,000 per month for services provided, and $2 to $3 for each investor package mailed to potential investors. Some agreements also provided that Donner would receive stock if the company's share price exceeded a certain level after Donner initiated coverage of the company. Uberti testified that, for the companies Baclet gave him "to handle," Uberti received fifty percent of the amounts "generated by [Donner's] relationship with the company."

Between 1999 and 2000, Donner issued research reports on the stock of forty-eight companies that did not disclose the compensation Donner received for its analysis. Most of these reports recommended the company's securities as a "speculative buy," but some reports (usually after Donner initiated coverage on a company with a "speculative buy" and thereafter issued a subsequent report) recommended a "buy" or a "strong buy." These reports stated simply that Donner "may from time to time perform investment banking, corporate finance, provide services for, and solicit investment banking, corporate finance or other business" from the company. Several of these reports added the words "for a fee" after this description of services.

1. The drafting of the reports

Donner recruited Richard Merrell as an independent contractor to prepare research reports. Merrell drafted over 200 of the reports issued by Donner and all but three of the allegedly violative reports at issue in this proceeding. 9/ Merrell was not registered with NASD in any capacity, was not a Donner employee, and did not write research reports as his full-time job. He worked full-time as a quality assurance manager at an orthodontics firm and stated that he wrote reports for Donner as a "part time job that I did nights and weekends just to try to make extra money to feed my family." According to Merrell, Donner paid him $100 per report. 10/

Merrell had no prior experience conducting research or writing reports on publicly-traded companies. He testified that he was "not an expert enough to know what is negative information," did not understand the meaning of a going-concern qualification on financial statements, was "kind of fuzzy on the whole negative information aspect," and did not know enough to form an opinion about the companies.

Donner did not provide Merrell with any training and gave him little guidance in preparing research reports. Initially, Baclet faxed Merrell a template report and asked Merrell to draft reports that followed the template's format. Merrell stated that the template's overall tone was "generally positive." He testified that the template described the company as undervalued or highly undervalued, well-positioned to garner a substantial share of the market, and poised to become a major player or leading provider. Merrell included this language in his subsequent

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9/ Tony Rhee, a Donner research analyst, drafted the remaining allegedly violative reports.

10/ Baclet states that Merrell was paid $150 per report.

reports but admitted that he had no independent knowledge as to whether these statements were in fact true or supported by the material included in the reports. Merrell understood that his reports should be generally positive.

Merrell prepared reports by using information obtained from the company, information obtained from Yahoo Finance's website, and, "as a last resort," information obtained from the company's public filings. He reformatted the information into the template provided him by Baclet. Merrell did not verify any company-generated information with another source. He did not visit the companies, test their products, or speak with any of their customers or competitors. Merrell observed that "for a hundred bucks a report I'm not going to spend a lot of time."

Merrell testified that Uberti was his primary contact at Donner. According to Merrell, Uberti would ask him to draft a report for a specific company. Merrell returned his drafts to Uberti. Uberti checked the accuracy of the financial information on the first page of the report and asked Merrell to make changes such as adding information about recent developments.

Although Uberti acknowledged that he received and reviewed the Donner research reports drafted by Merrell, ensured that the first page of the report contained accurate financial information, and edited the language used by Merrell, he also testified that he did not review the research reports "for compliance," did not determine "what needed to be or didn't need to be disclosed in the research report," and "made no determination [as to] what was material or what wasn't material." At some point, Uberti began reading the reports "in more depth," and made changes to the language used by Merrell. He admitted that he "did look at financial information" and "generally that information either came from a press release from the company or from the 10-K or the 10-Q." He testified further that he "read audited financial statements or going concern opinion statements." Uberti also acknowledged that if a research report contained "something that was not accurate then it would be my obligation to point that out."

In his investigative testimony, Uberti acknowledged that a going concern opinion should "definitely" be disclosed in a research report "so the investor knows the financial status of the company before they make an investment decision." He also stated that a research report should disclose negative earnings, pending lawsuits, and accumulated losses. He stated further that "all negative information, as far as financial, needs to be disclosed." 11/

11/ At the hearing, Uberti tried to downplay this testimony. His investigative testimony, however, was given closer in time to the events at issue, and we therefore give it greater weight. William Edward Daniel, 50 S.E.C. 332, 335 n.7 (1990) (stating that Commission "agree[d] with the NASD" that a witness's "earlier testimony" was more reliable than testimony before NASD's Board of Governors "as it was closer in time to the events in question"); see also Byron G. Borgardt, Securities Act Rel. No. 8274 (Aug. 25, 2003), 80 SEC Docket 3559, 3580 (finding "no reason to depart from [law judge's] assessment" that a witness's 1996 responses to questions posed by the Division of Enforcement during its

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2. The misleading reports.

NASD alleged that twenty-five of the Donner research reports contained material misstatements and omissions about the issuers' finances and business prospects. 12/ These reports were issued over Donner's name. Each report recommended the company's stock as a "speculative buy." The first page of the report provided information under categories entitled "Overview," "Earnings Per Share," "Capitalization," and "Revenues." The "Overview" section listed the recent price of the issuer's stock, its trading range for the prior year, trading volume, and the issuer's fiscal year. The "Capitalization" section included, variously, the number of shares outstanding, market capitalization, long-term debt, equity, debt/capital ratio, and working capital. The exact information included in the "Capitalization" section varied by report, and neither Merrell nor Uberti explained the reasons for the choice of information included in this section. The remainder of the report described the company's business. Each report concluded by again recommending the company's stock. Two of the twenty-five reports at issue had a second section containing additional financial information and a hyperlink to the Commission's website where the company's public filings were available.

Baclet acknowledged that Donner was paid to issue positive reports. Tony Rhee, a research analyst, testified that Baclet discouraged Rhee from writing negative reports. Baclet

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11/ (...continued)
investigation "should be accorded more weight" than his 1999 hearing testimony because "the 1996 responses were closer in time to the events in question").

12/ The Donner research reports at issue are (1) Dynamic Web Enterprises (DWEB), issued March 22, 1999; (2) General Automation, Inc. (GAUM), issued June 7, 1999; (3) Medical Science Systems (MSSI), issued June 14, 1999; (4) Imaging Technologies Corporation (ITEC), issued June 23, 1999; (5) Alyn Corporation (ALYN), issued July 7, 1999; (6) Esynch Corporation (ESYN), issued September 27, 1999; (7) Hawaiian Natural Water Co., Inc. (HNWCC), issued October 5, 1999; (8) American Champion Entertainment (ACEI), issued October 18, 1999; (9) StarBase Corporation (SBAS), issued October 12, 1999; (10) Imperial Petroleum (IPTM), issued November 11, 1999; (11) Professional Transportation Group, Ltd. (TRUC) issued January 17, 2000; (12) Dippy Foods, Inc. (DPPI), issued January 31, 2000; (13) Ocean Power Corporation (PWRE), issued February 23, 2000; (14) Ilive.com, Inc. (LIVE), issued March 8, 2000; (15) Itronics, Inc. (ITRO), issued March 20, 2000; (16) Genius Products, Inc. (GNUS), issued April 25, 2000; (17) Insider Street.com (NSDR), issued April 26, 2000; (18) Pen Interconnect, Inc. (PENC), issued May 23, 2000; (19) Advanced Biotherapy Concepts (ADVB), issued August 21, 2000; (20) Far East Ventures, Inc. (FEVI), issued January 10, 2001; (21) SEDONA Corporation (SDNA), issued April 25, 2001; (22) Aethlon Medical, Inc. (AEMD), issued June 12, 2001; (23) Advanced Aerodynamics and Structures, Inc. (AASI), issued June 27, 2001; (24) Vital Living, Inc. (VTLV), issued April 24, 2002; and (25) Xechem International, Inc. (ZKEM), issued May 16, 2002.

testified that Donner sent draft reports to the subject company to ensure that "the company felt good about the report" before Donner issued it to the public. Almost all the reports at issue stated that Donner believed the company's stock was "undervalued" or "highly undervalued." The reports also stated that the company was "well-positioned," "poised," or otherwise ready to grow and become a market leader in its industry. Most reports stated further that there was "superior potential for appreciation of this stock" or "significant upside potential" or that the stock presented a "significant" or "outstanding" investment opportunity.

The companies' public filings did not contain such optimistic assessments. The then most-current financial statements for all twenty-five companies included an auditor's opinion with a going-concern qualification about the company's ability to continue in existence. 13/ The companies' public filings disclosed additional negative financial information, including the nature and extent of net losses 14/ and the sources of the companies' negative earnings, such as significant operating losses, 15/ defaults on payment obligations, 16/ reliance on short-term borrowing and issuance of stock for operating capital, 17/ inadequate working capital, 18/ accumulated deficits, 19/ and/or cash flow deficiencies. 20/ Certain public filings indicated that the companies were unlikely to generate revenues or profits in the near future. 21/

13/ A going-concern opinion indicates substantial doubt about a company's ability to continue in existence for another year without additional capital or funding or other significant operational changes. Rocky Mountain Power Co., 53 S.E.C. 979, 983 n.6 (1998).

14/ DWEB, ITEC, ALYN, ESYN, HNWCC, ACEI, IPTM, TRUC, LIVE, ITRO, PENC, ADVB, FEVI, AASI, and VTLV.

15/ DWEB, GAUM, MSSI, ESYN, SBAS, IPTM, SDNA, AEMD, VTLV, and ZKEM.

16/ ADVB and AASI.

17/ ESYN, HNWCC, ACEI, SBAS, IPTM, TRUC, GNUS, NSDR, PENC, and VTLV.

18/ DWEB, GAUM, ITEC, ALYN, ESYN, IPTM, TRUC, DPPI, PENC, ADVB, VTLV, and ZKEM.

19/ MSSI, ALYN, ESYN, ACEI, SBAS, IPTM, DPPI, PWRE, ITRO, PENC, ADVB, AEMD, and ZKEM.

20/ GAUM, MSSI, ALYN, HNWCC, ACEI, TRUC, PWRE, LIVE, ITRO, GNUS, NSDR, ADVB, AASI, and ZKEM.

21/ DWEB, GAUM, MSSI, ALYN, HNWCC, SBAS, IPTM, NSDR, PENC, ADVB, AASI, and ZKEM. In addition, according to their filings, both GAUM and LIVE were experiencing liquidity problems.

Donner also failed to disclose that several of the issuers had limited operating histories or were development-stage companies. 22/ Some of the companies were dependent on certain key customers for a large percentage of the issuers' revenues 23/ or dependent on key officers or employees, 24/ or faced significant competition in their industries. 25/ Certain issuers had negative cash flow, 26/ and two of the issuers faced material litigation. 27/ Certain issuers also disclosed a lack of potential for future profitability and anticipation of increasing losses. 28/ The Donner research reports failed to disclose any of this information.

Donner's research report on Xechem International, Inc. (ZKEM), issued May 16, 2002, is illustrative. Donner reported that Xechem was "significantly undervalued, considering it is positioning itself as the premier provider of the next generation of nutraceutical and pharmaceutical healthcare products to a global audience." Donner stated that Xechem was "positioned to become a global leader in the development and sale of naturally derived nutraceutical and pharmaceutical products." The report also stated that Donner believed Xechem was "on the verge of tremendous growth and may represent an outstanding investment opportunity for the prudent investor."

Xechem's Form 10-KSB for the year ending December 31, 2001, filed on March 29, 2002, however, included an opinion by Xechem's independent auditor expressing "substantial doubt about [Xechem's] ability to continue as a going concern." The Form 10-KSB disclosed that Xechem was a development-stage company that had "experienced significant operating losses since inception and ha[d] generated minimal revenues from its operations." It stated

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22/ ALYN, DPPI, PWRE, VTLV, and ZKEM. Donner also failed to disclose that LIVE, NSDR, ADVB, and ZKEM were development-stage companies. A development-stage enterprise is defined by Statement of Financial Accounting Standards No. 7 as a business devoting substantially all of its efforts to establishing a new business in which either: (1) planned principal operations have not commenced, or (2) there have been no significant revenues therefrom. Russell Ponce, 54 S.E.C. 804, 806 n.9 (2000), aff'd, 345 F.3d 722 (9th Cir. 2003).

23/ ITEC, TRUC, and NSDR.

24/ IPTM and LIVE.

25/ GAUM, MSSI, ALYN, HNWCC, ACEI, TRUC, PWRE, LIVE, ITRO, GNUS, NSDR, ADVB, AASI, and ZKEM.

26/ DWEB, ITEC, IPTM, PENC, AEMD, AASI, and VTLV.

27/ ITRO and ESYN.

28/ DWEB, MSSI, ITEC, ALYN, HNWCC, SBAS, IPTM, PENC, ADVB, AEMD, AASI, VTLV, and ZKEM.

further that "additional operating losses can be expected." According to Xechem, "[n]o assurance [could] be given that [its] product research and development efforts will be successfully completed, that required regulatory approvals will be obtained, or that any products, if developed and introduced, will be successfully marketed or achieve market acceptance." Xechem also stated that its competitors had "substantially greater capital resources, research and development capabilities, manufacturing and marketing resources, and experience." The Form 10-KSB indicated that Xechem had an accumulated deficit of $36,000,000. None of this negative information was included in the Donner research report.

The remaining twenty-four Donner research reports at issue contained similar statements in the reports and omitted similar information from the company's public filings. For example, the research report on Dynamic Web Enterprises, Inc. (DWEB), issued March 22, 1999, stated that "Dynamic Web's stock is undervalued," that it "possesse[d] the knowledge both scientifically and strategically to make a significant impact on the booming e-commerce market," and that a "large market exist[ed] for the company's products and services, creating superior potential for appreciation of this stock." Dynamic Web's most recent Form 10-KSB, however, contained a going-concern qualification by the company's auditor, stated that Dynamic had "lost money every quarter since" it entered the electronic commerce business, stated that it could not give assurances that it would soon or would ever make a profit, stated that it "expect[ed] to lose substantial amounts of money in the near future," and stated that the electronic commerce industry was "highly competitive." Donner's report did not disclose this negative information.

Donner's research report on eSynch Corporation (ESYN), issued September 27, 1999, stated that eSynch was "undervalued considering the large and growing demand for the company's internet products," "possesse[d] the knowledge both scientifically and strategically to rise to the top of the internet utilities and electronic software distribution industry," and had "large and lucrative markets . . . for the company's products, creating superior potential for appreciation of this stock." The most recent Form 10-KSB for eSynch, however, included a going-concern qualification and stated that the company had incurred a $5 million net loss, had $1,413 in cash on hand, had a deficit in working capital of $2 million, had been relying upon short-term borrowing and the issuance of stock, and faced numerous pending lawsuits. The research report issued by Donner for eSynch did not reflect any of this information.

Donner issued a press release whenever it issued a research report, noting that copies of the report could be obtained from Donner and providing either Donner's telephone number or website address. The reports were available to the public without restriction. Uberti testified that the "research report was posted to the web site and whoever wanted to come in and register and print it and go to their broker and say 'should I buy this' could do it."

Baclet submitted a document during NASD's investigation identifying the persons who worked on each research report. Baclet agreed that he worked on all twenty-five research reports discussed above and wrote that Uberti worked on twenty-two of these reports. 29/

3. The supervision of the reports

Donner's written supervisory procedures designated Baclet as the Donner principal responsible for advertising, which included research reports. 30/ As Baclet admitted, Donner did not have any written procedures providing guidance for the preparation of research reports. Donner's written procedures also did not provide a review process for research reports. 31/ Although Donner's written procedures stated that a designated principal would approve each item of advertising (which, as noted above, included research reports), Baclet admitted that he did not sign or initial the research reports as an indication that the firm had approved the reports for dissemination.

Baclet acknowledged that he bore responsibility if the research reports contained exaggerated or misleading statements or omitted material facts. In his investigative testimony, however, he stated that he rarely reviewed the public filings for the issuers that Donner covered. At the hearing, he stated further that although he would "look at" the final drafts of Donner's research reports, he "wouldn't read them." Baclet testified that he had read only three or four of the allegedly violative reports and ten to fifteen of the 200 reports that Donner issued in total. Baclet conceded that this failure was irresponsible and admitted that he still had not read the allegedly violative reports at the time of the hearing.

Baclet testified that he conducted supervision by hiring competent individuals. Baclet also testified that Donner's legal and compliance department had one or two attorneys, one or two law school graduates, and three to five interns. In 1999, Brett Saddler was in the compliance

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29/ According to Baclet, Uberti had no responsibility for the research reports on MSSI, VTLV, or ZKEM. NASD did not charge Uberti with violations in connection with these reports.

30/ Baclet stated generally that "any responsibilities of [Donner] were ultimately my responsibilities" and that Donner's written supervisory procedures listed him "as having responsibility for basically everything." Uberti and Runyon confirmed that Baclet ran Donner's operations and "usually got involved in most of the supervisory issues."

31/ Uberti testified that he never saw any procedures for the writing and dissemination of research reports or to ensure that the reports did not contain exaggerated or unwarranted statements.

office. 32/ A compliance consultant retained by Donner found Saddler disorganized and unfamiliar with NASD requirements. It appears that in 2001 Rebecca Wilson headed the compliance operation. Neither Saddler nor Wilson was registered with NASD. The record does not establish any role that Saddler or Wilson had in reviewing research reports.

Baclet conceded that "[n]either Ms. Wilson nor any student had any authority to initiate, supplement or conclude positively or negatively any compliance agenda; they were merely extra hands and feet for myself" and other unidentified principals. Baclet also testified that by November 1999, Donner had retained five additional registered principals. However, there is no evidence in the record that these principals had any role in reviewing research reports. Uberti testified that "the licensed person that was responsible for compliance [was] Jeff Baclet."

B. The Lincoln Research Reports

In July 2001, Uberti and Runyon left Donner and formed Lincoln, a non-member firm, and became registered representatives of Lloyd. 33/ Lincoln prepared research reports for distribution over the Internet. Uberti and Runyon each owned fifty percent of Lincoln. They shared responsibilities equally and also shared equally in the firm's profits. Runyon testified that he and Uberti equally shared the responsibility of producing a fair and objective research report. Uberti admitted that the content of the research reports was solely his and Runyon's, and not Lloyd's, responsibility. Uberti also acknowledged that Lloyd "never edited the content of the report other than the disclaimer and the heading."

Uberti contacted Merrell and asked Merrell to write Lincoln's research reports. Merrell drafted approximately seventeen Lincoln research reports, including a report, dated August 30, 2001, on The Majestic Companies, Ltd. ("Majestic"), and one, dated October 31, 2001, on Dtomi, Inc. ("Dtomi"), the two Lincoln research reports at issue here. Merrell followed the same format as the Donner reports. Lincoln's reports recommended Majestic and Dtomi as "speculative buys."

Lincoln represented that Majestic had "significant upside potential," was "well-positioned for growth," and was "quickly becoming a recognized leader in its field" of school bus safety devices. The company's public filings, however, did not support such positive statements. Its most recent financial statements included a going-concern qualification. The most recent Form 10-KSB also stated that Majestic was a "development stage company," that its "business units

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32/ At some points in the record, Saddler was identified as the compliance director. Baclet states in his brief that Saddler was never the director.

33/ According to CRD, Uberti's and Runyon's association with Donner terminated as of July 31, 2001. Both Uberti and Runyon contend that they resigned from Donner on July 6, 2001. Donner did not file a Form U-5 "Uniform Termination Notice for Securities Industry Registration" for either Uberti or Runyon until May 2002.

[had] not generated sufficient earnings to cover the cost of operations," that its "management team [had] no direct operating experience" in its industry prior to 1998, that its industry was "a highly competitive field," and that "[a]ll of [Majestic's] competitors ha[d] capital and other resources greater than [Majestic's]." The Form 10-KSB also disclosed that Majestic incurred a net loss of $5,815,893 during 2000 and a net loss of $4,123,634 during 1999, that its current liabilities exceeded its current assets by $1,449,524 as of December 31, 2000, and that a substantial portion of its assets were illiquid. In its most recent Form 10-QSB, Majestic disclosed further that it had an accumulated deficit of $14,091,989 and was named as a defendant in litigation seeking over $700,000 in damages. Lincoln's research report for Majestic disclosed none of these facts. 34/

The Lincoln report on Dtomi stated that the company was "well-positioned for growth," had "positioned itself to significantly impact the $4 billion market intelligence industry," and was "poised" to become a "leading provider" and "leading developer" in that industry. The Lincoln report noted that Dtomi had "entered into an agreement to acquire privately held International Manufacturers Gateway, Inc. (IMG)," that the merger was "expected to close by November 15, 2001," and that the merger was "expected to generate immediate revenues and significantly enhance shareholder value." Lincoln's report disclosed that Dtomi reported no revenues and a net loss of $94,794 since its inception. However, according to the report, Dtomi "expected to generate $800,000 in the first twelve months of operations," and its "primary objective" was to "generate $2.7 million in gross sales and gain 1,500 customers between November 1, 2001 and November 1, 2002." As noted, the report, however, was issued two weeks before the anticipated merger and did not disclose the risk that the merger might not occur. In fact, the merger did not occur until two months after the report's issuance.

Audited financial statements did not exist for either Dtomi or IMG. Only Copper Valley Minerals, Ltd. ("Copper Valley"), Dtomi's predecessor, had audited financial statements. Copper Valley's most recent financial statements included a going-concern qualification. According to its most recent Form 10-KSB, Copper Valley "had a limited operating history," had "not achieved any revenues or earnings from operations," and had "no significant assets or financial resources." The Form 10-KSB also stated that, unless the company acquired a new business opportunity, the company would likely "sustain operating expenses without corresponding revenues," incur "a net operating loss that will increase continuously," and be unable to "generate revenues that will be sufficient to cover [its] expenses." The most recent Form 10-QSB filed by Copper Valley listed the company's cash on hand as $365. The Dtomi report did not disclose this information.

Uberti testified specifically that he reviewed Majestic's two most recent 10-K reports and all the intervening 10-Q reports and knew about the going-concern qualification. He also testified that he read Copper Valley's 10-K report in preparation for writing the Dtomi report. In

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34/ The Majestic report included a hyperlink to the Commission's website where the company's public filings were available.

his investigative testimony, Runyon admitted that he reviewed Majestic's most recent 10-K and 10-Q reports and that he "probably" read the most recent 10-Q report filed by Copper Valley.

Lincoln disseminated these reports to the public by posting the reports on its website and issuing a press release. Any member of the public could access Lincoln research reports by registering on the website and receiving a password.

III.

A. Antifraud and Public Communications Violations

Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Rule 2120 each prohibit fraudulent and deceptive acts in connection with the purchase or sale of a security. A violation of these provisions "may be established by a showing that persons acting with scienter misrepresented or omitted material facts in connection with securities transactions." 35/ NASD

35/ Alvin W. Gebhart, Jr. and Donna T. Gebhart, Exchange Act Rel. No. 53136 (Jan. 18, 2006), 87 SEC Docket 437, 462 n.80 (citing Basic Inc. v. Levinson, 485 U.S. 224, 239 n.17 (1988)), appeal pending, No. 06-71021 (9th Cir.). We find, and Applicants do not dispute, that Applicants made statements in connection with securities transactions. For purposes of establishing the "in connection with" requirement, a "misrepresentation need not be made with respect to a particular sales transaction but should be applied generally." SEC v. C. Jones & Co., 312 F. Supp. 2d 1375, 1381 (D. Col. 2004). "Where the fraud alleged involves public dissemination in a document such as a press release, annual report, investment prospectus or other such document on which an investor would presumably rely, the 'in connection with' requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation or omission." SEC v. Rana Research, Inc., 8 F.3d 1358, 1362 (9th Cir. 1993). The requirement is also satisfied when a statement is made "in a manner reasonably calculated to influence the investing public." Orlando Joseph Jett, Securities Act Rel. No. 8395 (Mar. 5, 2004), 82 SEC Docket 1211, 1250-51 n.37 (citing SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 862 (2d Cir. 1968)). Here, both Donner and Lincoln wrote research reports to "create exposure" for the subject companies and intended the reports for investors who could purchase the companies' stock. The reports were posted on Donner's or Lincoln's website, and each firm issued a press release whenever it issued a report. The reports included positive statements about the company's stock and recommended the stock as an investment. Cf. SEC v. Gebben, 225 F. Supp. 2d 921, 927 (C.D. Ill. 2002) (finding that internet postings on a web site "intended to provide information to investors about stocks" which included "positive recommendations about Issuers' stocks and encouraged readers to buy Issuers' stocks" and "disputed negative comments about Issuer stock" sufficiently influenced investors to establish the "in connection with" requirement).

Rule 2210 prohibits, in any communication with the public, 36/ "exaggerated, unwarranted, or misleading statements or claims" or the omission of "any material fact or qualification" that would render statements misleading. 37/ The rule also requires that public communications "be based on principles of fair dealing and good faith," "be fair and balanced," and "provide a sound basis" for evaluating a security. Misrepresentations and omissions are also inconsistent with just and equitable principles of trade and violate NASD Rule 2110. 38/

1. Reports' Material Misstatements and Omissions.

The Donner and Lincoln research reports contained both material misrepresentations and omissions. A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available. 39/ Both the Donner and Lincoln research reports contained statements asserting that the subject stock was "undervalued" or "highly undervalued," that the company was "well-positioned," "poised," or otherwise ready to grow and become a market leader, and that there was "superior potential for appreciation of this stock," "significant upside potential," or a "significant" or "outstanding" "investment opportunity." The research reports, however, failed to disclose the going-concern opinions or the net losses, inadequate working capital, default on payment obligations, accumulated deficits, cash-flow deficiencies, and reliance on short-term borrowing that triggered these opinions, and therefore omitted material facts. "[T]he materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge." 40/

Both the Donner and Lincoln research reports also failed to disclose the dim prospects and significant competition faced by the respective companies, and such failures constituted material omissions. "Material facts include . . . those facts which affect the probable future of a company and which may affect the desires of investors to buy, sell, or hold the company's

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36/ Under Rule 2210(a)(2), "communications with the public" include "research reports."

37/ Davrey Financial Services, Inc. and Pravin R. Davrey, Exchange Act Rel. No 51780 (June 2, 2005), 85 SEC Docket 2057, 2063.

38/ Gebhart, 87 SEC Docket at 463 n.86 (citing Robert Tretiak, Exchange Act Rel. No. 47534 (Mar. 19, 2003), 79 SEC Docket 3166, 3180).

39/ Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

40/ SEC v. Murphy, 626 F.2d 633, 653 (9th Cir. 1980).

securities." 41/ Various of the public filings disclosed that, for example, the companies were unlikely to generate revenues or profits in the near future; that the companies faced significant competition in their industries; had limited operating histories; relied on a few key customers for a significant portion of their revenue; and/or faced potentially significant lawsuits.

Baclet concedes that financial statements are material but argues that Donner was not required to include the financial statements in the body of the research reports. Donner's research reports, however, disclosed some financial information and coupled this limited disclosure with glowing descriptions of the issuer's prospects and position in its industry. The antifraud provisions "give rise to a duty to disclose any information necessary to make an individual's voluntary statements not misleading." 42/ "It is a well-settled principle that once disclosures are made, there is a duty to disclose all material information . . . . ." 43/ NASD Rule 2210(d)(1)(A), moreover, required Donner to issue fair and balanced research reports that provided a sound basis for evaluating the security.

We therefore reject Baclet's assertion that the recommendation of the securities as a "speculative buy" was sufficient to put potential investors on notice that the companies had issues with respect to their finances or operations. The reports did not explain what Donner meant by the term "speculative buy," and that recommendation was surrounded with highly positive information about the issuer that omitted material negative information.

We also reject Applicants' argument that the research reports did not need to disclose the omitted facts because they believed a reasonable investor would read the company's public filings and obtain the information from those filings and because some reports provided a hyperlink to the Commission's website where those filings were available. 44/ The research reports themselves needed to convey a complete and accurate picture and could not depend on other

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41/ SEC v. Hasho, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992) (quoting SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968)); see also Tretiak, 79 SEC Docket at 3176.

42/ SEC v. Druffner, 353 F. Supp. 2d 141, 148 (D. Mass. 2005); see also SEC v. Fehn, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (stating that the federal securities laws "impose[] a duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading"); John J. Kenny and Nicholson/Kenny Capital Mgmt., Inc., Securities Act Rel. No. 8234 (May 14, 2003), 80 SEC Docket 564, 576 (finding respondent, once he undertook to speak, "was obligated to do so truthfully and in a way that was not misleading"), aff'd, 87 Fed. Appx. 608 (8th Cir. 2004).

43/ United States v. Cannistrano, 800 F. Supp. 30, 81 (D.N.J. 1992) (citing Greenfield v. Heublein, 742 F.2d 751, 756, 758 (3d Cir. 1984) (citing SEC v. Texas Gulf Sulphur Corp., 401 F.2d 833, 862 (2d Cir. 1968) (cert. denials omitted))).

44/ Only a few of the violative research reports had such hyperlinks. See supra Section II.A.2.

information available to investors. "When a securities recommendation is made to a customer, it is necessary that full disclosure be made of all material facts. A broker may not satisfy that obligation by pointing to bits and pieces of information that appeared in the media or elsewhere and were never brought to the customer's attention." 45/ "A reasonable investor would want to know of any risks or potential harms associated with his or her investment." 46/

We find inapposite the cases cited by Uberti in support of his argument that Donner did not need to disclose any information available to the public. Although the court in Whirlpool Fin. Corp. v. GN Holdings, Inc. 47/ stated, as noted by Uberti, that a "reasonable investor is presumed to have information available in the public domain," the court made this statement in finding that the availability of the information in the public domain placed the plaintiff on inquiry notice of his potential fraud claim for purposes of "start[ing] the [statute of] limitations clock." The court did not find that the public availability of the information obviated a duty to disclose information necessary to make statements not misleading. Johnson v. Wiggs 48/ held that the public availability of the information meant that a stock seller did not have inside information unavailable to the buyer. The seller made no representations to the buyer rendered misleading by his failure to disclose any material information. In Panter v. Marshall Field & Co., 49/ the court found that the defendant did not omit a material fact in its press release because the plaintiff had included that fact in its own press release and the defendant had no obligation to reemphasize the fact. The court did not find that the defendant had no obligation to disclose facts necessary to render its statements not misleading because such facts were publicly available. Here, however, respondents omitted facts necessary to make their representations in the research reports not misleading, and the public availability of those facts does not cure these omissions.

Applicants argue that the existence of a going-concern qualification is an opinion, and not a fact, and therefore does not require disclosure. However, a going concern opinion is "a most serious qualification on a financial statement because it generally indicates the auditor's opinion that a company is faced with a serious risk of bankruptcy." 50/ Conditions or events that suggest the need for a going-concern opinion include recurring operating losses, working capital

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45/ Richmark Capital Corp., Exchange Act Rel. No. 48758 (Nov. 7, 2003), 81 SEC Docket 2205, 2215-16, aff'd, 86 Fed. Appx. 744 (5th Cir. 2004).

46/ SEC v. Treadway, 430 F. Supp. 2d 293, 330 (S.D.N.Y. 2006).

47/ 67 F.3d 605 (7th Cir. 1995).

48/ 443 F.2d 803 (5th Cir. 1971).

49/ 646 F.2d 271 (7th Cir. 1981).

50/ Copy Data Sys., Inc. v. Toshiba America, Inc., 755 F.2d 293, 299 (2d Cir. 1985).

deficiencies, negative cash flows from operating activities, and adverse key financial ratios. 51/ Accordingly, both the existence of an opinion by a company's auditor expressing substantial doubt about the company's ability to continue in existence and the negative financial information providing the basis for such an opinion constitute material facts. 52/

Uberti and Runyon argue that, because Dtomi anticipated merging with IMG, they did not need to disclose information relating to Dtomi's predecessor, Copper Valley. Uberti acknowledged that the Dtomi research report contained no indication that this merger might not occur even though the merger was not expected to close until at least two weeks after the issuance of the report and in fact did not close for another two months. Uberti admitted that investors buying Dtomi on the day the research report was issued would only be buying the company that had entered into, but not yet consummated, a merger. Copper Valley's limited assets and lack of operations were facts material to assessing an investment in Dtomi as it existed at the time and in assessing the potential success of the projected merger.

Baclet asserts that the Donner research reports did not violate the antifraud provisions because Donner "declined to represent about 100 out of about 250 businesses that solicited

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51/ CODIFICATION OF STATEMENTS ON AUDITING STANDARDS, The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern, AU § 341 (American Inst. of Certified Pub. Accountants 1994).

52/ Baclet argues that failing to disclose the going concern qualification was not material because most of the issuers that were the subject of Donner research reports were still in business and their stock had risen in price at the time of the NASD hearing. It is unclear to which issuers Baclet refers. Moreover, that an issuer continues in business or becomes profitable at some point after its auditor gives a going-concern qualification to its opinion does not render the omission of the opinion's existence at the time of its issuance immaterial. See General Aeromation, Inc., 41 S.E.C. 219, 223-24 n.2 (1962) ("That somewhat favorable developments may have occurred subsequently cannot remedy the prior misstatements and failures to state adverse material facts.").

Uberti and Runyon argue that the going-concern opinion is not material because "no 8-K filing is required upon receipt of the Going Concern Opinion." A going-concern qualification need not be disclosed in a Form 8-K, however, because such a qualification is generated by the need to have audited financial statements in a Form 10-K. Form 8-K specifies that "[i]f the registrant previously has reported substantially the same information as required by this form, the registrant need not make an additional report of the information on this form." See General Instructions to Form 8-K, Federal Securities Laws (CCH) ¶ 33,211. The going-concern qualifications at issue here were disclosed in the issuers' annual reports on Forms 10-KSB. That certain specific events require filing a Form 8-K, moreover, does not mean that other facts are not material; the events for filing a Form 8-K do not define the universe of material facts for disclosure.

[Donner's] services," because Donner refused to write research reports on companies that offered to pay Donner but did not want full disclosure, and because Donner included going-concern opinions in other research reports. Donner's compliance with the law in some instances does not excuse its dissemination of these violative research reports. 53/

2. Participation in Reports' Creation and Dissemination.

The record establishes that Baclet was responsible for the Donner research reports and acted with scienter. Scienter is the "intent to deceive, manipulate, or defraud." 54/ It may be established by a showing of recklessness, 55/ which involves an "'extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.'" 56/

Baclet admits that he had ultimate responsibility for the Donner research reports and, based on the record before us, we conclude that he was the only Donner principal with responsibility for the reports. 57/ Baclet contracted with Merrell, a person with no prior

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53/ Cf. Rooms v. SEC, 444 F.3d 1208, 1214 (10th Cir. 2006) (stating that respondent, a general securities representative and principal of a former NASD member firm, "was required to comply with the NASD's high standards of conduct at all times); Robert Fitzpatrick, 55 S.E.C. 419, 433 (2001) (finding that NASD "correctly ruled that prompt compliance with some requests for information does not excuse dilatory compliance with other requests"); Robert Dermot French, 36 S.E.C. 603, 606 (1955) (finding that compliance with the net capital requirement in applicant's last inspection of his books "would not cure or excuse the repeated prior violations").

54/ Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

55/ See, e.g., Robert M. Fuller, Securities Act Rel. No. 8273 (Aug. 25, 2003), 80 SEC Docket 3539, 3546 n.20, petition denied, 95 Fed. Appx. 361 (D.C. Cir. 2004).

56/ The Rockies Fund, Inc. v. SEC, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing SEC v. Steadman, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1044-45 (7th Cir. 1977))).

57/ Although Baclet contends that "not even [Donner] could ultimately be responsible for the accuracy of information directly depicting the company itself but only the company authorities and representatives themselves," the research reports were issued under Donner's name, and Donner therefore bears responsibility for accurately portraying information from company filings and for the misleading content of the research reports. See SEC v. Current Financial Servs., Inc., 100 F. Supp. 2d 1, 7 (D.D.C. 2000) ("'Securities dealers cannot recommend securities without a reasonable basis for the

(continued...)

experience, to draft the bulk of Donner's reports and provided Merrell little guidance in preparing the reports. Although he claims that he relied on his legal and compliance department, he staffed that department with unregistered, unqualified, and inexperienced persons. 58/ As noted above, the record does not establish any role that these individuals had in reviewing the reports. In spite of Baclet's admitted responsibility for the reports, Baclet did not review the publicly available information about the companies. He knew that, for the companies Donner covered, "the financials were always a concern," yet he did not include negative financial information about the companies in his reports. Instead, Baclet conceded that he "was paid to come out with a positive report." Baclet also acknowledged that he did not read the final reports issued by Donner and that such conduct was "irresponsible." 59/ Baclet had no basis to believe that the reports conveyed an accurate picture of the risks associated with the issuers. 60/ Under these circumstances, Baclet's conduct represented an extreme departure from the standards of ordinary care, which presented an obvious danger of misleading buyers or sellers.

The record establishes that Uberti also acted with scienter with respect to the twenty-two Donner research reports charged against him. Uberti knew that the companies' public filings contained material negative financial information because he "look[ed] at financial information," which "generally . . . either came from a press release from the company or from the 10-K or the

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57/ (...continued)
recommendation[.]'") (quoting SEC v. Kenyon Capital, Ltd., 69 F. Supp. 2d 1, 9, (D.D.C. 1998)); see also Sheen Fin. Res., Inc., 52 S.E.C. 185, 191 n.25 (1995) ("While some of these documents may have been prepared by entities other than Applicants, Applicants endorsed the contents of these documents when they affixed the Firm's logo and Sheen's name and business address to each document, compiled the materials as part of their seminar packet, and distributed the packet to seminar attendees.").

58/ Baclet also retained responsibility as president of the firm. As we have stated, the president of a broker-dealer

> is responsible for the firm's compliance with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his or her duties.

Harry Gliksman, 54 S.E.C. 471, 482 (1999) (quoting Rita H. Malm, 52 S.E.C. 64, 69 (1994)), aff'd, 24 Fed. Appx. 702 (9th Cir. 2001) (Unpublished).

59/ Baclet testified that he still had not read most of the reports at the time of the hearing.

60/ Although Baclet contends that the issuers "signed off on the accuracy of the report as it pertained to the company," a "salesman may not rely blindly on the issuer for information concerning a company." Hanly v. SEC, 415 F.2d 589, 597 (2d Cir. 1969).

10-Q" and he "read [the] audited financial statements or going-concern opinion statements." In his investigatory testimony, Uberti acknowledged that negative financial information should be disclosed in a research report. He admitted further that, if a research report contained "something that was not accurate[,] then it would be my obligation to point that out." Uberti knew, however, that the Donner research reports did not disclose the material negative information contained in the companies' public filings because he reviewed the reports. He acknowledged at the hearing that he received and reviewed the Donner research reports from Merrell, ensured that the first page of the report contained accurate financial information, and edited the language used by Merrell. Uberti stated in his investigative testimony that he was the individual who added any financial information about each company to the research reports. 61/ Uberti acted recklessly because his failure to include negative financial information likely important to investors in the research reports, despite knowing that the companies' public filings contained such negative information, involved an extreme departure from the standards of ordinary care which presented an obvious danger of misleading buyers or sellers.

We reject Uberti's argument that he did not act with scienter because he relied on "Baclet, Compliance and Legal Department directives." Uberti acted recklessly because he himself read the reports that contained positive statements about the issuers, reviewed the public filings pertaining to the issuers that included negative financial information, and knew that this negative information was not included in the reports. Uberti did not believe that the individuals on whom he purportedly relied were investigating financial information beyond the companies' public filings. Although Uberti testified that the Donner research reports "went through a compliance and through a legal department," he stated that "[w]hat they did specifically I don't know." Uberti did not reasonably rely on Baclet or the compliance or legal department to correct the material misstatements and omissions that he recklessly disregarded. 62/

61/ Uberti now seeks to distance himself from his investigative testimony by claiming that he acted in "an administrative capacity" and "wasn't analyzing the financial information" or determining "what needed to be or didn't need to be disclosed in the research report" or "what was or wasn't material." We agree with NASD that the record supports the conclusion that Uberti had substantive responsibility for the reports. Uberti's testimony is consistent with that of other witnesses. Runyon stated in his investigative testimony that Uberti "probably had his hands on the Research Reports more than anyone else in the compilation and coordination of putting the report together." Baclet stated in his investigative testimony that "if a Research Report was put together, it would go through Mike Uberti before it was published" and that Uberti "oversaw the research reports" and "read the Research Reports before they went out."

62/ Cf. Dane S. Faber, Exchange Act Rel. No. 49216 (Feb. 10, 2004), 82 SEC Docket 530, 542 (rejecting applicant's claim "that he cannot have scienter because he properly relied on [his firm's] research on Interbet" because applicant "in fact read Interbet's business plan, which contained much of the material information he failed to disclose").

Uberti and Runyon also are responsible for the Lincoln research reports. According to Uberti, they "both reviewed the reports," "went through the financials and put in the financial information," and "added in the financial information that [they] believe[d] needed to be in the research report." Uberti and Runyon also both reviewed the companies' public filings. As noted above, Uberti testified that he reviewed Majestic's two most recent 10-K reports and all the intervening 10-Q reports as well as Copper Valley's 10-K report. Runyon testified that he reviewed Majestic's most recent 10-K and 10-Q reports and "probably" read the most recent 10-Q report filed by Copper Valley. Reviewing the companies' public filings and failing to notice the significant negative information contained therein or concluding that such information need not be included in the research reports involved an extreme departure from the standards of ordinary care, which presented an obvious danger of misleading buyers or sellers. Uberti and Runyon thus acted recklessly by failing to disclose the material negative financial information in their reports.

Uberti's and Runyon's investigative testimony further underscores their scienter. As noted above, Uberti conceded in his investigative testimony the importance of disclosing negative information. Runyon stated in his investigative testimony that a research report that failed to disclose the existence of a going-concern opinion would not be fair and accurate and that such an opinion needs to be disclosed "[b]ecause if the company does not get additional money from somewhere, they are going to be out of business." 63/ He testified further that he read the auditor's going-concern opinion in Majestic's public filings and that the Majestic research report should have disclosed this opinion. In this testimony, Runyon also stated that research reports should disclose accumulated deficits, pending lawsuits, and significant competition. 64/ We find that Donner and Baclet violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5 and NASD Rules 2120, 2210, and 2110 with respect to twenty-five of the research reports issued by Donner, that Uberti violated these provisions with respect to twenty-two of these twenty-five

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63/ At the hearing, Runyon, when asked to explain his statements regarding the necessity of including a going-concern opinion in the research reports, stated that he "was harboring a great deal of resentment towards Donner Corporation and Jeff Baclet" and that he "may have slanted [his] testimony regarding how or what [he] would say should be included in the Donner report" in an "effort to strike back at Donner." We reject this self-serving explanation. According to Baclet, Runyon's statement demonstrates that Runyon's "testimony against [Baclet] was a lie." We have not relied on Runyon's testimony in making findings against Baclet except for facts that are not disputed by Baclet.

64/ Uberti testified further that the research reports were "not for the average investor" but were "for speculative investors that can lose all their money and are willing to take that gamble." The reports, however, were freely available on Lincoln's website and access to them was not restricted in any manner. "Nor do the facts that customers . . . are sophisticated or aware of speculative risks justify making misstatements to them." James E. Cavallo, 49 S.E.C. 1099, 1102 (1989); see also Stephen E. Muth, Exchange Act Rel. No. 52551 (Oct. 3, 2005), 86 SEC Docket 1217, 1237-38 n.56 (and cases cited therein).

Donner reports, and that Uberti and Runyon violated these provisions with respect to the Lincoln research reports issued on Majestic and Dtomi.

B. Touting Violations

The record establishes that Donner and Baclet violated NASD Rule 2110 with respect to research reports covering forty-eight issuers, and that Uberti violated Rule 2110 with respect to reports covering forty-three of these issuers, 65/ by failing to disclose the compensation received by Donner in violation of Securities Act Section 17(b). 66/ "In order to violate Section 17(b), a person must (1) publish or otherwise circulate (using a means of interstate commerce), (2) a notice or type of communication (which describes a security), (3) for consideration received (past, currently, or prospectively, directly or indirectly), (4) without full disclosure of the consideration received and the full amount." 67/ A violation of Section 17(b) does not require a finding of scienter. 68/ "Section 17(b) was designed to protect the public from publications that

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65/ As noted above, Uberti was charged, based on a document prepared by Baclet, with the failure to disclose compensation in reports covering forty-four of these issuers. NASD's exhibit charging Uberti with liability, however, lists Uberti as liable for the Discovery Laboratories, Inc. report, and Baclet did not identify Uberti as having worked on this report. Accordingly, we set aside NASD's finding that Uberti violated NASD Rule 2110 with respect to this research report.

66/ As a result of this finding, we do not need to consider whether the failure to disclose the compensation received in exchange for writing the reports also violated Exchange Act Section 10(b), Rule 10b-5 thereunder, or NASD Rules 2120, 2210, and 2110.

67/ SEC v. Gorsek, 222 F. Supp. 2d 1099, 1105 (C.D. Ill. 2001); see also Donald R. Lehl, 55 S.E.C. 843, 866 (2002) (stating that "Securities Act Section 17(b) makes it unlawful for any person to use the mails or other means of interstate commerce to publish or circulate any communication, including circulars, advertisements, and articles, 'which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof'") (citing Securities Act Section 17(b), 15 U.S.C. § 77q(b)).

68/ Lehl, 55 S.E.C. at 867.

'purport to give an unbiased opinion but which opinions in reality are bought and paid for.'" 69/ "[A] violation of the securities laws . . . is a violation of Conduct Rule 2110." 70/

Baclet acknowledged that Donner "was paid to come out with a positive report"; however, Donner did not disclose that it received compensation for issuing the reports or the amount of the compensation received. Donner posted the reports on its website, 71/ and described the issuer, analyzed the issuer's prospects, and recommended the issuer's stock in these reports. 72/ Donner sent its new clients an investment banking agreement and an invoice for $2,500 and drafted the research report after receiving the company's check. Baclet acknowledged that he "was paid in stock or cash and/or both," and Uberti testified that, for the companies he oversaw, he "would get fifty percent of the revenues or income that was generated from [Donner's] relationship with that company."

The Donner research reports, however, stated only that Donner "may from time to time perform investment banking, corporate finance, [or] provide services for" the issuer, sometimes adding that Donner might perform these services "for a fee." They did not disclose that Donner in fact received compensation in exchange for writing and making public the research reports or the type of consideration or the amount of compensation received. Thus, Donner failed to make the requisite disclosure. 73/

69/ Gorsek, 222 F. Supp. 2d at 1105 (quoting United States v. Amick, 439 F.2d 351, 365 (7th Cir. 1971)); see also Lehl, 55 S.E.C. at 867 (quoting Amick).

70/ Paul Joseph Benz, Exchange Act Rel. No. 51046 (Jan. 14, 2005), 84 SEC Docket 2631, 2636 n.15; see also Gebhart, 87 SEC Docket at 460 n.75 (finding that respondents' sales in violation of Securities Act Section 5 also constituted a violation of NASD Rule 2110); Sorrell v. SEC, 679 F.2d 1323, 1326 (9th Cir. 1982) (stating that an obvious violation of the securities laws such as selling unregistered securities also would violate the requirement that NASD members observe just and equitable principles of trade).

71/ See SEC v. Phoenix Telecom, LLC, 239 F. Supp. 2d 1292, 1298 (N.D. Ga. 2000) (finding that the means of interstate commerce include an internet web site).

72/ See Gorsek, 222 F. Supp. 2d at 1105 (finding that defendants published a communication describing a security by "produc[ing] 'profiles' on behalf of its issuer-clients" which "recommended the stock of the issuer and appeared to be an independent analysis").

73/ See Gorsek, 222 F. Supp. 2d at 1106-07 ("Here, Section 17(b) calls for the disclosure of the receipt of compensation and the amount. It is undisputed that the Defendants did not disclose the amount of compensation in their written or verbal communications concerning their issuer-clients . . . . [Defendant's disclosure] fail[s], as previously noted, to list the amount of compensation; [it] also fail[s] to disclose the type of consideration

(continued...)

Although Uberti contends that he "was not responsible for the disclaimer" regarding Donner's compensation, he e-mailed Merrell the disclaimer for inclusion in the research reports and admitted in his brief that he "checked to make sure the disclaimer was in fact included on the last page of the report." He knew that "Donner had some sort of agreement with the various companies" to receive compensation for issuing the reports, and he received, as noted above, fifty percent of Donner's revenue generated by the research reports that he worked on. Uberti acknowledged that after NASD issued the complaint he "went and looked at the regulations and the regulations says [sic] you have to disclaim what you were paid and the amount thereof." 74/

We sustain NASD's finding that Donner, Baclet, and Uberti violated NASD Rule 2110 by failing to disclose in violation of Securities Act Section 17(b) the compensation received by Donner in exchange for issuing the research reports. 75/

C. Supervisory Violations

NASD Rule 2210(b)(1) provides that a "registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint." The record establishes that Donner and Baclet violated NASD Rule 2210(b)(1) by failing to have a Donner principal approve and sign Donner's research reports. Donner's written supervisory procedures listed Baclet as having primary responsibility for the firm's advertising and sales literature. The written procedures stated that the designated principal would approve each item of advertising and sales literature, and defined sales literature as including research reports. However, those procedures did not set forth how the principal's approval was to be obtained. Uberti testified he was unaware of a procedure to obtain such approval. None of the Donner research reports contained the signature or initials of Baclet or any

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73/ (...continued)
(e.g., stock, cash, or combination of cash and stock). Therefore, the Court finds there is no genuine issue of material fact disputing that [Defendants] violated Section 17(b)."); see also Lehl, 55 S.E.C. at 867-68 (finding that the "disclosure that persons . . . 'may' receive compensation or may receive securities is misleading and inadequate when they in fact received or contracted to receive compensation").

74/ Uberti testified further that the disclaimer used by Donner was the "industry standard" and that "if all the broker/dealers were using that, that must be accepted by the NASD even though the rule says you have to put the very specific amount of compensation in the disclaimer." "The courts and the Commission have repeatedly held that a practice may be prevalent in the industry and still be fraudulent." IFG Network Secs., Exchange Act Rel. No. 54127 (July 11, 2006), 88 SEC Docket 1374, 1380 (citing cases).

75/ We reject Baclet's contention that NASD alleged that he "broke disclosure rules during 1999 and 2000 that didn't exist until July 2001." Both NASD Rule 2110 and Section 17(b) of the Securities Act were in effect at the time Donner issued its research reports.

other registered principal. Baclet admitted that he did not approve the reports in writing. He admitted further in his reply brief that he was "unintentionally wrong by not having a principal sign off on the reports." We thus sustain NASD's finding that Donner and Baclet violated Rule 2210(b)(1). 76/

NASD Rule 3010 provides that a member firm shall "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD." We have held that "supervisory procedures must establish mechanisms for ensuring compliance and detecting violations." 77/

Donner's written supervisory procedures did not include any guidance with respect to the preparation and review of research reports. Uberti testified that he never saw any written supervisory procedures for the writing and dissemination of research reports or to ensure that the reports did not contain exaggerated or unwarranted statements. Baclet admitted that he failed to review the majority of the research reports and that such failure was "irresponsible."

We reject Applicants' suggestion that a "worksheet" used by Donner fulfilled the requirements of either NASD Rules 3010 or 2210(b)(1). Baclet testified that the worksheet was "just kind of a check sheet that would allow you to correspond with the company all the way down to the end." Although Baclet added that "as time progressed it evolved into different things, like is the due diligence done [or] is the corporate director's questionnaire completed," the only worksheet in the record consisted of a chronology of communications between Donner and the issuer. It was entitled "Donner Corp. Billing Sheet." The top of the worksheet listed the name of the company and its contact information, and the body of the document listed notations such as "faxed invoice," "mailed check," and "draft," with a date next to each. Although Uberti suggested that Donner's worksheet could be considered part of Donner's procedures and could contain a principal's signature, he acknowledged that he did not know whether anyone actually signed the worksheet or otherwise indicated on the worksheet that the report was approved for

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76/ Baclet contends that he "was not made aware of this necessity" of having a principal of the firm sign or initial the research reports and that he would have signed the reports himself had he "known the reports had to be signed off on." We have held repeatedly that "ignorance of NASD rules does not excuse an associated person from compliance with those rules." Guang Lu, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket 2639, 2646 n.16 (citing Gilbert M. Hair, 51 S.E.C. 374, 378 (1993)), aff'd, 179 Fed. Appx. 702 (D.C. Cir. 2006).

77/ John A. Chepak, 54 S.E.C. 502, 506 (2000).

dissemination to the public. The worksheet in the record did not document any compliance review by a Donner principal or written approval of the report's dissemination. 78/

IV.

Applicants raise a series of procedural objections. For the reasons set forth below, we reject these challenges.

A. Baclet, Uberti, and Runyon each argue that NASD did not provide them with adequate notice of the charges against them. Baclet contends that NASD "would not disclose to [him] the specific reports and supposed problems with those reports until the hearing thereby denying [him] a reasonable time to prepare a fair defense." NASD, however, identified the allegedly violative reports in its complaint filed on October 21, 2002, and provided Baclet with a chart detailing each alleged misstatement and omission in each report on March 13, 2003, six months before the hearing began on September 15, 2003. 79/

With respect to Uberti and Runyon, NASD's complaint alleged that Lincoln's issuance of the Majestic and Dtomi research reports resulted in violations of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and NASD Rules 2120, 2210, and 2110. The complaint alleged that Uberti and Runyon "intentionally or recklessly" failed to disclose "going concern opinions," the "underlying basis" for those opinions, and the "true financial condition of the companies." NASD also provided Uberti and Runyon with a summary exhibit detailing each alleged misstatement and omission in both reports on March 28, 2003, five-and-a-half months before the

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78/ Baclet attached to his reply brief a document entitled "The Formulation of Donner Analyst Report." Although the document lists ten steps for preparing a research report, Baclet did not introduce it at the hearing, and it is not part of the record in this proceeding. Baclet has not demonstrated the materiality of the exhibit or reasonable grounds for his failure to adduce this document previously. See Commission Rule of Practice 452, 17 C.F.R. § 201.452 (stating that a motion to adduce additional evidence "shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"). Baclet acknowledged at the hearing that Donner's written supervisory procedures did not discuss the preparation and issuance of research reports in its description of the nature of Donner's business. The document attached to the reply brief does not indicate when it was written or to whom it was distributed. For these reasons, we do not attach any weight to the new document.

79/ NASD filed an amended list of the violative reports and an amended chart of the misstatements and omissions on July 17, 2003, in order to "cure minor oversights."

hearing. We find that NASD adequately informed Baclet, Uberti, and Runyon of the nature of the charges against them. 80/

B. Baclet contends further that NASD based its allegations on draft research reports rather than the final research reports issued by Donner. The senior manager conducting NASD's investigation, however, testified that he asked Baclet for a final copy of each research report, that Baclet allowed NASD staff to copy the research reports off his computer onto a disk, and that NASD staff printed these reports off that disk for use as exhibits at the hearing. He added that Applicants had not produced any other research reports which they claimed to be final reports. Although Baclet continues to maintain that NASD reviewed only draft reports, he also states in his reply brief that he "decisively apologize[s] for insisting [NASD] didn't have final reports."

C. Baclet also contends that he "had 12 years in the business having passed all evaluations and examinations in which a number of the same reports were cleared." The only examination documented by Baclet, however, found "deficiencies and/or violations of law." It stated, moreover, that Donner "should not assume that [its] activities not discussed in this letter are in full compliance with the federal securities laws or other applicable rules and regulations." In any event, as noted above, a broker-dealer cannot shift its responsibility for compliance with applicable requirements to the NASD. "A regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." 81/

D. Baclet asserts that NASD staff exhibited prejudice against him. He claims that the NASD staff attorney conducting his on-the-record interview "was offended at [his] request to pray" before that interview. No evidence exists that NASD staff treated Baclet unfairly or not impartially as a result of Baclet's request. 82/ "Moreover, it is the NASD, not the staff, that makes decisions. Even if a member of the staff were biased, that would not mean that the NASD

80/ See, e.g., Toney L. Reed, 51 S.E.C. 1009, 1013 n.14 (1994) (rejecting applicant's claim "that the NASD did not give him adequate notice of the specific charges against him" where we "reviewed the NASD's complaint" and were "satisfied that [he] had sufficient notice of the charges against him and an adequate opportunity to defend himself").

81/ William H. Gerhauser, 53 S.E.C. 933, 940 (1998) (finding applicants liable "even had there been an NASD audit that found no violations"); Rita H. Malm, 52 S.E.C. 64, 75 n.40 (1994) (rejecting applicant's "contention that, because the NASD noted no markup, pricing or other 'exceptions' during its audit . . . NASD was subsequently precluded from bringing markup or supervisory charges").

82/ Cf. Michael Lubin, 55 S.E.C. 511, 533 (2002) (rejecting applicant's contention that the staff of the Chicago Board Options Exchange was "biased" because there was "no indication in the record that CBOE staff was unfair or not impartial in any way").

decision is biased." 83/ We also note that "our de novo review dissipates even the possibility of unfairness." 84/

E. Baclet also alleges that NASD "denied [him] due process." Although "self-regulatory organizations need not provide the same level of procedural due process as government agencies, Exchange Act Section 15A(b)(8) requires that they provide 'fair procedures' for disciplining members." 85/

Baclet claims that the Hearing Panel "all but totally obstructed Mr. Baclet from having defense witnesses." The Hearing Panel, however, repeatedly extended the deadline for Baclet to submit his proposed witness list. Moreover, the record indicates that the Hearing Panel provided Baclet every opportunity to present witnesses as part of his defense. For example, when Baclet still did not know, in the middle of the hearing, which, if any, of his proposed witnesses would be able to testify, the panel offered to change the order of testimony to accommodate Baclet. The Hearing Officer stated that "after Mr. Uberti then we would have expected to hear your witnesses and then we would have expected to hear from you. And what I'm saying is instead of after Mr. Uberti we hear your witnesses, we hear you first to give your witnesses the opportunity to sign the affidavits and get them in. I'm saying that would that be helpful to you."

We similarly reject Baclet's contention that NASD "monopolized two and a half of the three day hearing endlessly presenting the technicalities of how they gathered their information and only the last half of the last day on the supposed facts against [him] thereby not permitting [him] a fair response or even a comprehensive preparation for response; not even one night." Baclet had almost a year between the filing of the complaint and the start of the hearing to prepare his defense. NASD provided him access to its investigative files. The panel also provided him with the opportunity to testify, adduce evidence, and cross-examine witnesses. 86/

83/ Maximo Justo Guevara, 54 S.E.C. 655, 665 n.21 (2000)(quoting Frank J. Custable, Jr., 51 S.E.C. 855, 862 n.22 (1993)), petition denied, 47 Fed. Appx. 198 (3d Cir. 2002) (Table).

84/ Tretiak, 79 SEC Docket at 3184.

85/ Fitzpatrick, 55 S.E.C. at 427 (citing Larry Ira Klein, 52 S.E.C. 1030, 1039 n.36 (1996)).

86/ Cf. E. Magnus Oppenheim & Co., Exchange Act Rel. No. 51479 (Apr. 6, 2005), 85 SEC Docket 475, 480 (rejecting claim that NASD denied due process where "NASD conducted a hearing on the record at which Applicant was given the opportunity to confront and cross-examine adverse witnesses and to present Applicant's own case and witnesses"). Baclet attached forty-three exhibits to his reply brief. Several of these documents were not introduced at the hearing. Baclet has not demonstrated the materiality of these exhibits or reasonable grounds for his failure to adduce such exhibits previously. See Commission Rule of Practice 452, 17 C.F.R. § 201.452 (stating that a

(continued...)

F. Uberti and Runyon argue that they were "prejudiced" by NASD's denial of their motions to sever the proceeding. Before the hearing, they both filed motions to sever the allegations against Lincoln from the allegations against Donner. Although NASD denied the severance motion, it divided the hearing into two phases, with evidence pertaining to the Lincoln reports presented in phase one and evidence pertaining to the Donner reports presented in phase two.

NASD Rule 9214(d) provides that, in determining whether to sever a proceeding, the factors to be considered are: (1) whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings; (2) whether the severance would conserve the time and resources of the parties; and (3) whether any unfair prejudice would be suffered by one or more parties if the severance is (not) ordered. As noted by NASD, both Uberti and Runyon worked at Donner before forming Lincoln. The Lincoln research reports followed the same format as the Donner research reports, and Uberti and Runyon retained Merrell to write their research reports as he had done at Donner. Both Uberti and Runyon offered testimony relevant to both the allegations related to the Donner research reports and the allegations related to the Lincoln research reports. Neither Uberti nor Runyon demonstrate any prejudice from NASD's denial of the motion to sever. We find that NASD judged each Applicant solely on the record evidence pertaining to that Applicant. Under these circumstances, we agree with NASD that the same or similar evidence reasonably would be expected to be offered at each of the possible hearings, that severance would not have conserved the time or resources of the parties, and that the denial of a severance would not, and did not, prejudice any party.

V.

Under Exchange Act Section 19(e)(2), we may reduce or set aside sanctions imposed by NASD if we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary burden on competition. 87/ The NASD Sanction Guideline for intentional or reckless misrepresentations or omissions of material fact recommends suspending an individual or firm for between ten business days and

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86/ (...continued)
motion to adduce additional evidence "shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"). Although Baclet explains this failure as a result of "not having a history of legal instances" and "not being a lawyer," he introduced several exhibits at the hearing. We therefore grant NASD's motion to strike the additional evidence appended to Baclet's reply brief with respect to those exhibits not previously adduced at the hearing.

87/ 15 U.S.C. § 78s(e)(2). Applicants do not claim, and the record does not show, that NASD's action imposed an undue burden on competition.

two years, or, in egregious cases, barring the individual or expelling the firm. 88/ The guideline for intentional or reckless use of misleading communications with the public recommends suspending the individual or firm for up to two years, or, in the case of numerous acts of intentional or reckless misconduct over an extended period of time, barring the individual or expelling the firm. 89/

Using these guidelines, NASD expelled Donner and barred Baclet and Uberti. NASD did not impose additional sanctions on Donner and Baclet for their failure to maintain adequate written supervisory procedures or obtain written approval for dissemination of the research reports by a firm principal. NASD also suspended Runyon for six months, imposed on him a $20,000 fine, and ordered that he requalify as a general securities representative and principal. NASD also found these sanctions appropriate for Uberti's misconduct related to the Lincoln research reports, but did not impose these additional sanctions on Uberti in light of its imposition of the bar for his misconduct at Donner.

Applicants violated the antifraud provisions of the federal securities laws and the rules and regulations thereunder. "[C]onduct that violate[s] the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions." 90/ Donner and Baclet issued twenty-five research reports that violated the antifraud provisions. As NASD notes, these violations spanned a period of several years, and Donner and Baclet made the violative reports accessible to all members of the public. The reports omitted material negative financial information about the recommended companies and misleadingly portrayed the companies as undervalued, poised for growth, and having significant potential for appreciation. Donner and Baclet also issued the reports in exchange for compensation. We reject Baclet's contention that such misconduct deserves "[c]orrections, warnings, [or] small to moderate fines." Under the circumstances, we find the sanctions imposed by NASD on Donner and Baclet neither excessive nor oppressive.

We also find the sanctions that NASD deemed appropriate for Uberti and Runyon's misconduct regarding the Lincoln research reports neither excessive nor oppressive. Uberti and Runyon, through Lincoln, issued two research reports that violated the antifraud provisions of the federal securities laws. As did the Donner reports, these reports omitted negative financial information and contained exaggerated and unsubstantiated claims about the company's prospects. NASD considered the dissemination of these reports to all members of the public on Lincoln's website an aggravating factor. The six-month suspension, $20,000 fine, and

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88/ NASD Sanction Guidelines 96 (2001 ed.).

89/ Id. at 89.

90/ Gebhart, 87 SEC Docket at 469.

requalification requirement are well within the range of sanctions recommended by the guidelines. 91/

We cannot determine, however, whether the bar imposed for Uberti's misconduct with respect to the Donner research reports is excessive or oppressive. The record suggests that Uberti had less responsibility for the Donner research reports than Baclet. Nonetheless, NASD's National Adjudicatory Council (the "NAC") increased Uberti's sanction to a bar, the same sanction as it imposed on Baclet, after the Hearing Panel imposed on Uberti a two-year suspension and a $20,000 fine. The Hearing Panel found "as a mitigating factor that Uberti relied on Baclet's final review of the research report for conformity with the securities laws and NASD rules" and found Uberti's reliance on Baclet reasonable. According to the Hearing Panel, moreover, "Uberti also believed that Donner had previously cleared the format of the research reports . . . with the regulatory authorities." The Hearing Panel also found "credible" Uberti's expressions of remorse and testimony "that he would not make the same mistakes in the future." Although the NAC determined that Uberti's "continuance in the securities industry could pose a risk to the investing public," it did not discuss any of the mitigating factors identified by the Hearing Panel. Under the circumstances, we find it appropriate to remand the matter to NASD

91/ Uberti and Runyon argue that "there are no customer complaints and no evidence that anyone was harmed by the two reports." Although we cannot determine whether the reports caused harm, the reports recommended that investors purchase the issuers' stock while misrepresenting the issuers' financial condition. We do not believe any reduction in sanction is warranted. Cf. Coastline Financial, Inc., 54 S.E.C. 388, 396 (1999) (finding expulsion of firm and permanent bar of president neither excessive nor oppressive because, "[a]lthough, as the NASD noted, there was no evidence of customer harm, Respondents raised hundreds of thousands of dollars by selling securities through outright falsehoods to forty-eight investors"); Barr Financial Group, Inc., Investment Advisers Act Rel. No. 2179 (Oct. 2, 2003), 81 SEC Docket 828, 844 (finding cease-and-desist order, bar, and revocation of registration "amply warranted" where, "[a]lthough there is no evidence that any customer lost money as a result of respondents' violations, their actions clearly posed a threat to the investing public" because the "untrue assertions made by respondents in [their] Commission filings misled investors regarding [respondent's] qualifications and the willingness of others to trust respondents with their assets").

so that it can consider whether a bar is excessive or oppressive in light of this evidence. Although, as noted, NASD did not impose the sanctions for the Lincoln violations on Uberti in light of the bar it imposed for the Donner violations, on remand NASD should consider whether imposing such sanctions on him is warranted.

An appropriate order will issue. 92/

By the Commission (Chairman COX and Commissioners CAMPOS, NAZARETH, and CASEY); Commissioner ATKINS not participating.

Nancy M. Morris
Secretary

92/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55313 / February 20, 2007

Admin. Proc. File No. 3-12260

In the Matter of the Application of

DONNER CORPORATION INTERNATIONAL,
JEFFREY L. BACLET,
VINCENT M. UBERTI, and
PAUL A. RUNYON

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING FINDINGS OF VIOLATION AND SUSTAINING IN PART AND VACATING AND REMANDING IN PART SANCTIONS IMPOSED BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the findings of violation made by NASD against Donner Corporation International, Jeffrey L. Baclet, Vincent M. Uberti, and Paul A. Runyon be, and they hereby are, sustained; and it is further

ORDERED that the sanctions imposed on Donner Corporation International, Jeffrey L. Baclet, and Paul A. Runyon be, and they hereby are, sustained; and it is further

ORDERED that the sanctions imposed on Vincent M. Uberti be, and they hereby are, vacated and remanded to NASD for further proceedings in accordance with this opinion.

By the Commission.

Nancy M. Morris
Secretary

NASD v. Donner Corporation International, et al.

Amended Exhibit A

	Issuer/Symbol/Market/Date/Recommendation	Reports Alleged Against Uberti
1	Dynamic Web Enterprises ("DWEB")/OTCBB 03/22/99: Speculative Buy	Yes
2	General Automation, Inc. (GA Express) ("GUAM")/OTCBB 06/07/99: Speculative Buy	Yes
3	Medical Science Systems ("MSSI")/Nasdaq 06/14/99: Speculative Buy	No
4	Imaging Technologies Corporation ("ITEC")/OTCBB 06/23/99: Speculative Buy	Yes
5	ALYN Corporation ("ALYN")/Nasdaq 07/07/99: Speculative Buy	Yes
6	Esynch Corporation ("ESYN")/OTCBB 09/27/99: Speculative Buy	Yes
7	Hawaiian Natural Water Co., Inc. ("HNWCC")/Nasdaq Small Cap 10/05/99: Speculative Buy	Yes
8	American Champion Entertainment ("ACEI")/Nasdaq Small Cap 10/18/99: Speculative Buy	Yes
9	StarBase Corporation ("SBAS")/Nasdaq 10/21/99: Speculative Buy	Yes
10	Imperial Petroleum ("IPTM")/OTCBB 11/11/99: Speculative Buy	Yes
11	Professional Transportation Group, Ltd. ("TRUC")/Nasdaq 01/17/00: Speculative Buy	Yes
12	Dippy Foods, Inc. ("DPPI")/OTCBB 01/31/00: Speculative Buy	Yes

13	Ocean Power Corporation ("PWRE")/OTCBB 02/23/00: Speculative Buy	Yes
14	Ilive.com, Inc. ("LIVE")/OTCBB 03/08/00: Speculative Buy	Yes
15	Itronics, Inc. ("ITRO")/OTCBB 03/20/00: Speculative Buy	Yes
16	Genius Products, Inc. ("GNUS")/OTCBB 04/25/00: Speculative Buy	Yes
17	Insider Street.com ("NSDR")/OTCBB 04/26/00: Speculative Buy	Yes
18	Pen Interconnect Inc. ("PENC")/OTCBB 05/23/00: Speculative Buy	Yes
19	Advanced Biotherapy Concepts ("ADVB")/OTCBB 08/21/00: Speculative Buy	Yes
20	Far East Ventures, Inc. ("FEVI")/OTCBB 01/10/01: Speculative Buy	Yes
21	SEDONA Corporation ("SDNA")/Nasdaq Small Cap 04/25/01: Speculative Buy	Yes
22	Aethlon Medical, Inc. ("AEMD")/OTCBB 06/12/01: Speculative Buy	Yes
23	Advanced Aerodynamics and Structures, Inc. ("AASI")/OTCBB 06/27/01	Yes
24	Vital Living, Inc. ("VTLV")/OTCBB 04/24/02: Speculative Buy	No
25	Xechem International Inc ("ZKEM")/OTCBB 05/16/02: Speculative Buy	No

NASD v. Donner Corporation, International, et al.

Amended Exhibit B

Issuer Name	Calendar Year 1999	Calendar Year 2000	Reports Alleged Against Uberti
1. Abaxis, Inc.	May 4		X
2. Alyn Corporation	July 7		X
3. American Champion Entertainment	October 18		X
4. Avcorp Industries	June 7		X
5. B2 Technologies		March 6	X
6. Carbite Golf	September 13		X
7. China Premium Food Corp.		February 8	X
8. Comanche Energy, Inc.	October 27		X
9. Cypros Pharmaceuticals Corp.	April 2 and July 23		
10. Datametrics Corporation	August 23		X
11. Digital Power	July 28		X
12. Dippy Foods		January 31 and March 27	X
13. Discovery Laboratories, Inc.	November 30	April 10	X
14. Diversified Senior Services	December 16		
15. Dynamic Web Enterprises	March 22		X
16. Esynch Corporation	September 27		X
17. General Automation (G/A Express, Inc.)	June 7 and October 8	January 25	X
18. Genetronics	June 16		
19. Geo2 Limited	October 21		X
20. Hawaiian Natural Water Company, Inc.	October 5		X
21. Ilive.com		March 8	X
22. Imaging Technologies Corporation	June 23		X
23. Incubator Capital		February 7	X
24. Integrated Spatial Information Solutions, Inc.		March 6	X

25. Interleukin Genetics */		March 8	
26. InternetStudios.com, Inc.		March 2	X
27. Itronics, Inc.		March 20	X
28. Lancer Orthodontics	April 19		X
29. Longport, Inc.		February 2	X
30. Media Bay, Inc.		March 9	X
31. Medical Science Systems, Inc.	June 14 and July 12		
32. Mustang Software, Inc.	September 21	February 22	X
33. ObjectSoft Corp.	September 13		X
34. Ocean Power Corporation		February 23	X
35. Orlando Predators Entertainment, Inc.		February 22	X
36. Pen Interconnect, Inc.	September 21		X
37. PharmaPrint, Inc.	July 23		X
38. Pioneer Behavioral Health, Inc.	May 5 and June 21		
39. PLC Systems, Inc.**/		April 24	X
40. PriceNet USA, Inc.		March 7	X
41. Retrospettiva, Inc.		February 23	X
42. Starbase Corporation	October 21 and December 16		X
43. SVI Holdings	September 9	February 17	X
44. Titan Pharmaceuticals, Inc.	June 22		
45. Tri-Lite, Inc.	October 19		X
46. Trimedyne, Inc.	July 27	February 28 and April 4	X
47. TrimFast Group, Inc.		March 7	X
48. WaveRider Communications, Inc.		February 8	X
49. Xybernaut Corporation	October 12	January 24	X
50. Zapworld.com		February 23	X

*/ NASD made no findings with respect to the Interleukin Genetics research report.

**/ NASD made no findings with respect to the PLC Systems, Inc. research report.