

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 52050 / July 18, 2005

ADMINISTRATIVE PROCEEDING
File Nos. 3-9688 and 3-9794

In the Matter of	:	
	:	
	:	Order Approving
Wheat, First Securities, Inc.	:	Plan of Disgorgement and
f/k/a First Union Capital Markets Corp.	:	Making Payment
and	:	
	:	
Teressa L. Cawley	:	

On February 26, 2004, the Commission published notice of the Plan of Disgorgement Distribution ("Plan") proposed by the Division of Enforcement ("Division") in this proceeding. The Plan proposed that \$245,815.20 of disgorgement and interest paid by Wheat, First Securities, Inc. f/k/a First Union Capital Markets Corp. ("Wheat"), pursuant to the Commission's Order issued on April 20, 2003, be distributed to the United States Treasury. Among other things, the Commission's Order concerns undisclosed payments that Wheat made to a lobbyist in connection with Wheat's work as a financial advisor to Broward County, Florida.

The Commission received only one comment on the Division's proposed Plan. The comment, from Broward County, Florida, sought \$41,700 plus prejudgment interest of the disgorgement.

Upon consideration of the comment received, the Commission finds that the Division's proposed Plan is fair and reasonable, and should be approved. See SEC v. Wang, 944 F.2d 80,84 (2d Cir. 1991) (Court will approve plan if "fair and reasonable"); SEC v. Certain Unknown Purchasers, 817 F.2d 1018, 1020 (2d Cir. 1987) (the Commission has broad discretion in approving disgorgement distribution plans as a function of its equitable powers in remedying violations of the securities laws), cert. denied, 484 U.S. 1060 (1988).

The reason for this finding is summarized as follows: First, Broward County states that its contract with Wheat permitted it to recover any fees paid to a lobbyist. This provision for a permissible claim, however, does not demonstrate that Broward County suffered damages as a result of Wheat's payments to the lobbyist. Second, Broward

County states that Wheat's payments to the lobbyist were fees that Wheat would have attempted to recoup from Broward County bond fees. However, Broward County does not provide any support for its conclusion that Wheat would have passed on the costs of the payments (rather than, for example, absorbing those fees as a cost of doing business). Finally, Broward County seeks recovery for all of the fees that Wheat paid to the lobbyist during the relevant time, even though the Commission's Order finds that only certain of the payments resulted in violations of the federal securities laws.

Accordingly,

It is ORDERED that the Plan is approved, and \$245,815.20 shall be paid to the United States Treasury.

By the Commission.

Jonathan G. Katz
Secretary