

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 SECURITIES DIVISION

4 IN THE MATTER OF DETERMINING) Order Number S-04-255-05-TO01
5 Whether there has been a violation of the)
6 Securities Act of Washington by:) SUMMARY ORDER TO CEASE AND
7) DESIST AND NOTICE OF INTENT TO
8) IMPOSE FINES AND RECOVER COSTS
9 Westwood Holdings, Inc., and Igor)
10 Malyar (a/k/a George Falcone),)
11)
12 Respondents

13 THE STATE OF WASHINGTON TO: Westwood Holdings, Inc.
14 Igor Malyar (a/k/a George Falcone)

15 **STATEMENT OF CHARGES**

16 Please take notice that the Securities Administrator of the State of Washington has reason
17 to believe that Respondents, Westwood Holdings, Inc. and Igor Malyar (a/k/a George Falcone),
18 have each violated the Securities Act of Washington and that their violations justify the entry of
19 an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist
20 from such violations. The Securities Administrator finds that delay in ordering the Respondents
21 to cease and desist from such violations would be hazardous to investors and to the public and
22 that a Summary Order to Cease and Desist should be entered immediately. The Securities
23 Administrator finds as follows:

24 **TENTATIVE FINDINGS OF FACT**

Respondents

1. Westwood Holdings, Inc. (“Westwood Holdings”) is a New York corporation, doing business at 40 Exchange Place, Suite 808, New York, NY 10005.

SUMMARY ORDER TO CEASE AND DESIST AND
NOTICE OF INTENT TO IMPOSE FINES AND
RECOVER COSTS

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
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1 2. Igor Malyar (a/k/a George Falcone) (“Malyar”) represents himself as George Falcone,
2 President of Westwood Holdings.

3 Other Proceedings

4 3. The U.S. Securities and Exchange Commission filed a civil action in the United States
5 District Court for the District of Connecticut against, in part, Westwood Holdings, Inc. and
6 Malyar in connection with the unregistered and fraudulent offerings of "pre-IPO" stock in two
7 separate automatic teller machine ("ATM") companies in which the defendants raised at least
8 \$4.9 million from over 360 investors nationwide.

9 4. On June 14, 2005, the United States Attorney for the District of Connecticut
10 announced the unsealing of a Superseding Indictment that charges, in part, Malyar with 28
11 counts of securities fraud, mail fraud, money laundering, and money laundering conspiracy
12 violations. Malyar, with others, is alleged to have stolen approximately \$2,000,000 through a
13 “boiler room” investment scam that defrauded more than 50 victims. The unsealed Superseding
14 Indictment was returned by a federal grand jury on May 26, 2005. Malyar was arrested on a
15 federal arrest warrant by New York Police on June 1, 2005.

16 Description of the AMTX Offering

17 5. In early February 2004, a Washington resident residing in Whatcom County
18 (“Investor”) was contacted at home via a “cold call” by Malyar representing himself as George
19 Falcone.

20 6. Malyar explained to Investor that Westwood Holdings is a venture capital firm which
21 takes small companies public or sells small companies to mutual funds. Additionally, for every
22 share Investor would purchase, Westwood Holdings would purchase matching shares, which
23 would create a partnership between Malyar and Investor so that Malyar would have a major

1 voice in the company. Malyar further explained that, after the sale of their first investment,
2 Investor's original money would be returned and the gains invested in the next venture. Malyar
3 clarified that Westwood Holdings only does three or four ventures a year.

4 7. Malyar mailed Investor an eight page pamphlet describing Westwood Holdings'
5 investment strategy.

6 8. Malyar contacted Investor throughout February 2004. Malyar described a venture in
7 which Investor could purchase shares of ATM Express (ATMX) at \$20 per share that
8 Westwood Holdings would sell to a mutual fund in September 2004 for at least \$28 per share.

9 9. In late February 2004, Investor agreed to purchase 100 shares of ATMX at \$20 per
10 share. On February 25, 2004, a letter welcoming Investor as a new client of Westwood
11 Holdings was mailed and signed by Adam Paulson, Senior Vice President of Westwood
12 Holdings.

13 10. Westwood Holdings sent a Subscription Agreement to Investor for ATMX stating that
14 the "undersigned acknowledges that the Shares will not be registered under the Federal
15 Securities Act of 1933 [sic], as amended, '(the '1933 Act')[sic], or the Securities Act of any
16 State that absent an exemption would require registration, in reliance upon exemptions from
17 registration contained in those respective Acts...."

18 11. Westwood Holdings also sent a "Buy Confirmation" dated February 25, 2004 to
19 Investor. The Buy Confirmation confirmed the purchase of 100 shares of ATMX at a unit price
20 of \$20 for a total cost of \$2,000. The comments section of the Buy Confirmation stated
21 "Estimated Opening Price: \$32.00" and "Stop Loss: 12% @ \$28.00." The Buy Confirmation
22 included the following payment instructions: "Please make checks payable to WESTWOOD
23 HOLDINGS Inc. escrow agent to ATM Express."

1 12. On February 27, 2004, Investor sent Westwood Holdings a check for \$2,000 for the
2 purchase of 100 shares of ATMX at \$20 per share.

3 13. Investor did not receive a new account statement, a prospectus, or financial
4 information of AMTX.

5 14. Sometime between February and May 2004 the price of AMTX stock declined to \$16
6 per share. Malyar explained to Investor that all shareholders would receive two (2) warrants
7 (ATMXW) with each share. The AMTXW warrants were to sell for \$5 each.

8 15. On or about May 11, 2004, Investor bought 900 shares of ATMX at \$16 for a total
9 price of \$14,400. Investor also received 1,800 ATMXW warrants at a unit price of \$5 for no
10 charge.

11 16. The Buy Confirmation for the additional shares listed Investor's total position as 1,000
12 ATMX shares and 2,000 ATMXW warrants, which is a combination of the 100 ATMX shares
13 first purchased, 200 ATMXW warrants from those 100 shares, and the 900 ATMX shares with
14 the 1,800 warrants from the second purchase. The comments section still contained the
15 statements "Estimated Opening Price: \$32.00" and "Stop Loss: 12% @ \$28.00," but also added
16 that "If deal is not public in 60 days all original funds will be returned."

17 17. Investor mailed a check for \$5,000 on June 16, 2004 and a check for \$9,400 on July 3,
18 2004, totaling \$14,400 as payment for the 900 ATMX shares.

19 18. On July 29, 2004, Investor purchased 1,000 ATMX shares at \$16 per share for a total
20 of \$16,000, as well as received 2,000 ATMXW warrants. The Buy Confirmation listed
21 Investor's total position as 2,000 ATMX shares and 4,000 ATMXW warrants. Once again the
22 comments section stated that "If deal is not public in 60 days all original funds will be returned."
23

1 19. On August 4, 2004, Investor mailed through Federal Express a check for \$16,000 to
2 Westwood Holdings as payment for the 1,000 ATMX shares.

3 20. Sometime between August 4, 2004 and September 2004, Malyar explained to Investor
4 that Malyar's AMTXW warrants had not been part of his original agreement with the company
5 AMT Express. Therefore, Malyar offered to sell his AMTXW warrants to Investor.

6 21. On or about September 9, 2004, Investor purchased 500 ATMX shares at \$16 per
7 share for a total of \$8,000, and received 1,000 AMTXW warrants with a listed unit price of \$5
8 per warrant. The Buy Confirmation listed Investor's total position as 2,500 ATMX shares and
9 5,000 AMTXW warrants. The comments section stated "Estimated Buy-out Price \$44.00
10 Estimated Buyout Date 9-10 to 9-24-04 If deal is not complet [sic] in 45, [sic] days all original
11 funds will be returned."

12 22. Malyar told Investor that a mutual fund would purchase ATMX on September 19,
13 2004.

14 Description of Google Offering

15 23. In August 2004, with the AMTX venture allegedly closing in September 2004, Malyar
16 told Investor that he had access to 500 shares of Google, which Investor could purchase at
17 \$66.33 per share.

18 24. Investor declined the offer of Google shares.

19 25. Malyar accepted Investor's rejection, but stated that he would take Investor's profits
20 from ATMX to purchase the Google shares for Investor.

21 26. Malyar and/or Westwood Holdings failed to provide Investor with any documentation
22 of the purchase or sale of Google stock. Google stock went public on August 19, 2004 at \$85
23 per share. It appears that Google stock was never available at \$66.33 per share.

1 Description of BDKR Offering

2 27. In or around August 2004, Malyar contacted Investor about Westwood Holdings' next
3 venture. The company was described as a small lock company (referred to as BDKR) that
4 would be sold to Black and Decker Corporation.

5 28. Soon after September 19, 2004, Investor attempted to contact Malyar. After five days
6 of trying, Investor spoke with Malyar and requested \$15,000 from his account with Westwood
7 Holdings. Malyar stated that he had invested all of Investor's funds from the sale of ATMX and
8 Google shares into the next venture, BDKR, and therefore, Malyar was unable to withdraw
9 Investor's money.

10 29. From the end of September through October 2004, Investor requested that Malyar wire
11 all of his money to his bank account.

12 30. On or about October 27, 2004, Westwood Holdings sent Investor a "Sell
13 Confirmation" that described the sale of 13,102,272 BDKR shares at \$28.60 per share for a total
14 of \$374,724.97. The Sell Confirmation listed Investor's total position as "0".

15 31. On many different occasions throughout November 2004, Malyar told Investor that the
16 funds could not be wired because the attorneys working on the deal were "holding things up."

17 32. On November 30, 2004, Malyar agreed to wire Investor's money, stating that the wire
18 would be completed on December 1, 2004. To date, the funds have not been received in
19 Investor's account.

20 Misrepresentations and Omissions

21 33. Malyar's statements concerning the investments he offered, including his statements
22 about the returns of those investments and the safety of those investments, were misleading
23 because Malyar failed to provide investors material information about the companies described

1 above, including, but not limited to, the risk associated with the investment and the financial
2 condition of the companies. He did not provide financial statements for ATMX or BKDR or
3 other information concerning the financial condition of ATMX or BKDR.

4 34. Westwood Holdings failed to provide material information on the alleged purchase
5 and sale of 500 shares of Google.

6 35. Malyar's representation that Black and Decker Corporation would purchase BKDR
7 was misleading. Black and Decker Corporation has no knowledge of Westwood Holdings.

8 Registration Status

9 36. Westwood Holdings is not licensed to sell in the State of Washington as a broker-
10 dealer and has not previously been so registered.

11 37. Malyar is not licensed as a securities salesperson or broker-dealer in the State of
12 Washington and has not previously been so registered.

13 38. ATMX and BDKR are not registered to sell their securities in the State of Washington
14 and have not previously been so registered. The offer and sale of AMTX shares was not
15 authorized by AMTX, nor was AMTX aware of the sale and offer by Westwood Holdings and
16 Malyar. BDKR is an unknown company and is apparently just an acronym. There is no
17 indication that BDKR is any different than AMTX in that Westwood Holdings and Malyar was
18 more than likely not authorized to sell or offer BDKR stock if the company does exist.

19
20
21 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:
22
23

1 **CONCLUSIONS OF LAW**

2 1. The offer and sale of AMTX stock and warrants, Google stock, and BDRK stock
3 described above constitute the offer or sale of a security as defined in RCW 21.20.005 (10) and
4 (12).

5 2. As described above, Respondent, Westwood Holdings, Inc., is a broker-dealer as
6 defined in RCW 21.20.005 (3).

7 3. As described above, Respondent, Igor Malyar (a/k/a George Falcone), is a
8 securities salesperson or broker-dealer as defined in RCW 21.20.005 (2) and (3).

9 4. Respondents, Westwood Holdings, Inc., and Igor Malyar (a/k/a George Falcone),
10 have violated RCW 21.20.040 by offering and/or selling said securities while not registered as
11 a broker-dealer or securities salesperson in the State of Washington.

12 5. Respondents, Westwood Holdings, Inc., and Igor Malyar (a/k/a George Falcone),
13 have each violated RCW 21.20.140 by offering and/or selling an unregistered security.

14 6. The offer and/or sale of said securities was made in violation of RCW 21.20.010
15 because, as set forth above, Westwood Holdings, Inc., and Igor Malyar (a/k/a George Falcone),
16 in connection with the offer and sale of a security, made untrue statements of material fact or
17 omitted to state material facts necessary in order to make the statements made, in light of the
18 circumstances under which they were made, not misleading.

19 The Securities Administrator finds that an emergency exists, that the continued violations
20 of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140, constitute a threat to the investing
21 public, and that summary orders to cease and desist from those violations is in the public interest
22 and necessary for the protection of the investing public.

1 **SUMMARY ORDER**

2 Based on the foregoing,

3 NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that Respondents,
4 Westwood Holdings, Inc., and Igor Malyar (a/k/a George Falcone), each cease and desist from
5 violation of RCW 21.20.040, the section of the Securities Act that requires registration of
6 securities salespersons and broker-dealers.

7 It is further SUMMARILY ORDERED that Respondents, Westwood Holdings, Inc., and
8 Igor Malyar (a/k/a George Falcone), and their agents and employees, each cease and desist from
9 violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

10 It is further SUMMARILY ORDERED that Respondents, Westwood Holdings, Inc., and
11 Igor Malyar (a/k/a George Falcone), and their agents and employees, each cease and desist from
12 offering or selling securities in any manner in violation of RCW 21.20.140, the section of the
13 Securities Act of Washington requiring registration.

14
15 **NOTICE OF INTENT TO IMPOSE FINES AND RECOVER COSTS**

16 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
17 Administrator, pursuant to RCW 21.20.390 and RCW 21.20.395, intends to order that
18 Respondents, Westwood Holdings, Inc., and Igor Malyar (a/k/a George Falcone), be jointly and
19 severally liable for and pay to the Securities Division (1) a fine of \$20,000 and (2) the costs, fees,
20 and other expenses incurred in the conduct of investigating this matter, in any amount not less
21 than \$1,000.

1 **AUTHORITY AND PROCEDURE**

2 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the
3 provisions of RCW 34.05. The Respondents, Westwood Holdings, Inc., and Igor Malyar (a/k/a
4 George Falcone), may each make a written request for a hearing as set forth in the NOTICE OF
5 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
6 order.

7 If a respondent does not request a hearing, the Securities Administrator intends to adopt
8 the above Tentative Findings of Fact and Conclusions of Law as final and make the summary
9 order to cease and desist permanent and impose the fine and costs as to that respondent.

10
11 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

12 Dated and Entered this 29th day of June, 2005

13
14 

15 MICHAEL E. STEVENSON
16 Securities Administrator

17 Approved by:

18 Presented by:

19 

20 Martin Cordell
21 Chief of Enforcement

22 

23 Dylan Waits
24 Financial Legal Examiner