

## SEC INVESTIGATION

In 1995, Jim Cramer's two vocations—money manager and journalist—collided in a very public way, resulting in an SEC investigation. The story is told from two very different perspectives by Cramer and Maier.

In February 1995, Cramer wrote a piece entitled “Pity the Poor Orphans” for his “Unconventional Wisdom” column in *SmartMoney*. The column focused on four stocks that generally lacked coverage by Wall Street analysts: Canonie Environmental, Hogan Systems, Rexon, and UFP Technologies. The article made strong statements about the stocks in order to sell the reader, predicting, for example, that “when the move comes, Canonie... might triple in price” and that UFTP would “grow like wildfire.”<sup>1</sup>

After the article was published, all four stocks jumped between 30 and 50 percent in a few days. Unfortunately, the article neglected to mention that Cramer & Co. had large positions in all four stocks. Cramer claims this was an oversight by the publisher, and that he immediately contacted Dow Jones to notify them that his article moved the stocks. He also placed a call to his lawyer, Bruce Birenboim, a partner at Paul Weiss.

Shortly thereafter, Howard Kurtz wrote a story in the *Washington Post* about how Cramer had used his position at *SmartMoney* to make himself rich. CNBC's Dan Dorfman called for an investigation. Eventually the SEC opened a formal investigation into Cramer for three things: (1) Whether Cramer was allowed to write about stocks he owned; (2) Why had Cramer failed to disclose his ownership; (3) Whether Cramer took money from the companies to write favorable articles. For legal advice, Cramer consulted Arthur Liman, lead counsel for Michael Milken. Liman told Cramer that this was just a “hangnail” and he had nothing to worry about.<sup>2</sup>

<sup>1</sup> Ibid., 107.

<sup>2</sup> Jim Cramer, *Confessions of a Street Addict*, 74.

Dow Jones conducted its own internal investigation. Eventually, Dow Jones wrote a letter to the SEC accepting blame for failing to disclose Cramer's ownership in the article, and the inquiry ended. Dow Jones also paid for Cramer's legal fees, about \$700,000.<sup>3</sup>

Looking back on the article, Cramer writes, "They were tiny stocks that I thought represent value because they weren't being promoted or sponsored by any firm."<sup>4</sup> Cramer blames the *SmartMoney* editors for omitting the ownership tag, but adds that it was obvious from the tone of the article that he owned the stocks. Cramer also accuses Rupert Murdoch and News Corp of conspiring against him.<sup>5</sup>

Nick Maier tells a different story:

...none of the orphans had been winners for the firm until then. Jim's typical approach was to constantly trade in and out of the market. When he started picking away at these names, he had no intention of ever owning 10 percent of Canonic, Hogan, REXON, or UFP Technologies. Because they performed so poorly, we continually averaged down, and eventually acquired more shares than we ever imagined we would. Once that happened, because of their illiquid status, it became impossible to sell even had we wanted to...There were plenty of days before Jim wrote the article, and even more after, that he criticized those stocks as perennial "pieces of shit" and "worthless losers."<sup>6</sup>

Maier contends that the only lesson Cramer learned from the "four orphans" incident was that Cramer had the power to move stocks through the press.

Cramer went on to build controversial relationships with CNBC news anchors, including Maria Bartiromo and David Faber. Maier writes, "Jim's strategy was to put in his order to buy a stock with Mark and then dial Maria. As soon as she announced the news on television, the stock would often jump. Jim then had Mark peel off whatever we had bought."<sup>7</sup> Cramer credits Baritomo with bringing him to CNBC.<sup>8</sup>

<sup>3</sup> Ibid., 81.

<sup>4</sup> Ibid., 70.

<sup>5</sup> Katharine Mieszkowski, "It was just stupid," *Salon.com*, June 4, 2002.

<sup>6</sup> Nicholas Maier, *Trading with the Enemy*, 110.

<sup>7</sup> Ibid., 124-125.

<sup>8</sup> Jim Cramer, *Confessions of a Street Addict*, 126.

Nicholas Maier worked for Cramer until 1998. Maier's book was published at the same time as Cramer's own tell-all, *Confessions of a Street Addict*. In 2002, Cramer sued HarperCollins and Nick Maier for publishing false statements about his dealings in a company called Western Digital. Three pages were redacted from the book by HarperCollins, which then did only one reprint.<sup>9</sup> *Trading with the Enemy* is now only available used in secondary markets.<sup>10</sup>

<sup>9</sup> David D. Kirkpatrick, "HarperCollins To Junk Copies Of a New Book Cited as Libel," *New York Times*, March 16, 2002.

<sup>10</sup> See, for example, <http://www.amazon.com/gp/product/0060086513/104-8526010-6042334?v=glance&n=283155> .