

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF: *

JAMES D. RITTER, Individually * *Case No. 2003-0663*
and as a principal of Maxim Growth *
Fund, LP and Maxim Capital, LLC * OAH Case No. SD-50-04-36600

and *

MAXIM GROWTH FUND, LP *

and *

MAXIM CAPITAL, LLC *

and *

MAXIM ASSET MANAGEMENT, LLC *

Respondents. *

* * * * *

FINAL ORDER

WHEREAS, the Maryland Securities Commissioner (the “Securities Commissioner”), pursuant to the authority granted in Section 11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns (1999 Repl. Vol. & Supp. 2001) (the “Securities Act”), initiated an investigation into the activities of Respondents James D. Ritter, Maxim Growth Fund, LP (“Maxim Growth”), Maxim Capital, LLC (“Maxim Capital”), and Maxim Asset Management, LLC (“MAM”) (collectively the “Respondents”); and

WHEREAS, the Securities Commissioner found that grounds exist to allege that Respondents violated the Securities Act by engaging in violations of Sections 11-301, 11-302, 11-401, 11-402 and 11-501 of the Securities Act; and

WHEREAS, the Securities Commissioner determined that Respondents may have been engaged in continuing violations of the Securities Act; and

WHEREAS, on January 16, 2004, the Securities Commissioner, pursuant to Section 11-701 of the Securities Act, issued a Summary Order to Cease and Desist and Order to Show Cause (the "Summary Order") ordering Respondents: to immediately cease and desist from further violations of the Securities Act; to show cause why that person should not be barred permanently from engaging in the securities and investment advisory business in Maryland, and why a monetary penalty should not be entered against that person; and, to show cause why a final order should not be entered against that person, ordering that person to cease and desist from further violations of Sections 11-301, 11-302, 11-401, 11-402 and 11-501 of the Securities Act; and

WHEREAS, on March 12, 2004, Daniel A. Ball, Esquire, filed an Answer to the Summary Order on behalf of James D. Ritter, Maxim Growth Fund, LP, and Maxim Capital, LLC, in which he requested a hearing on behalf of those respondents; and

WHEREAS, on July 13, 2004, the Securities Commissioner referred this matter to the Office of Administrative Hearings for a hearing and proposed decision; and

WHEREAS, the matter was assigned to the Honorable Geraldine A. Klauber who set the matter for a telephone prehearing conference scheduled on October 22, 2004; and

WHEREAS, on October 11, 2004, Daniel A. Ball, Esquire, withdrew his appearance on behalf of Respondents; and

WHEREAS, by letter dated October 14, 2004, Respondent Ritter requested a postponement of the prehearing conference in order to obtain new counsel. Counsel for the Securities Division did not object to Respondent Ritter's postponement request; and

WHEREAS, the postponement was granted and the telephone prehearing conference was rescheduled and held December 6, 2004; and

WHEREAS, on December 7, 2004, Judge Klauber ordered that Respondents had until February 28, 2005 to obtain counsel, the same deadline that the Securities Division was granted to file an Amended Summary Order to Cease and Desist. Judge Klauber further ordered that if counsel had not been obtained by February 28, 2005, Respondents Maxim Capital, LLC and Maxim Growth Fund, LP would be found in default; and

WHEREAS, Judge Klauber scheduled a telephone conference for March 14, 2005 to address hearing dates and outstanding discovery issues; and

WHEREAS, on February 28, 2005, the Securities Commissioner issued a First Amended Summary Order to Cease and Desist and Order to Show Cause, adding Maxim Asset Management, LLC as a respondent and adding information related to activities that occurred after the issuance of the Summary Order; and

WHEREAS, as of February 28, 2005, no attorney had entered an appearance on behalf of the Respondents and when the second telephone prehearing conference was convened on March 14, 2005, the Respondents still had not obtained counsel; and

WHEREAS, on March 2, 2005, the Securities Division filed a Motion for Default Judgment (the "Motion") against Respondents Maxim Growth Fund, LP and Maxim Capital, LLC and served that motion on James D. Ritter as principal of those two respondents; and

WHEREAS, Respondents Maxim Growth Fund, LP and Maxim Capital, LLC failed to file a response to the Motion: and

WHEREAS, on April 4, 2005, Judge Klauber issued a Proposed Order on Motion for Default Judgment (the “Proposed Order”) in which she proposed the entry of a default order that imposed upon Respondents Maxim Growth Fund, LP and Maxim Capital, LLC the relief requested in the Summary Order; and

WHEREAS, neither the Securities Division nor Respondents Maxim Growth Fund, LP and Maxim Capital, LLC filed a motion to modify or vacate the Proposed Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Order;

NOW, THEREFORE, THE COMMISSIONER FINDS, CONCLUDES AND ORDERS:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701 of the Securities Act.

II. RESPONDENTS

2. Respondent James D. Ritter’s last known address is in Long Beach, New York. As of around mid-2004, Ritter had no fixed address.

3. Between 1991 and 1995, Ritter was affiliated with brokerage firms including J.W. Gant & Associates, Inc., Tamaron Investments, Inc., Thomas James Associates, Inc. (a/k/a H.J. Meyers, Inc.), D. Blech & Company, Incorporated (“D. Blech”), Josephthal Lyon & Ross

Incorporated and Prime Charter Ltd. While an agent at each of those firms, Ritter was registered in Maryland as a broker-dealer agent, and with the NASD as a general securities representative.

4. From June 30, 1995 to May 16, 2000, Ritter was registered in Maryland as a broker-dealer agent affiliated with First Montauk Securities Corp. (“First Montauk”), and for that same period of time was registered with the NASD as a general securities representative affiliated with First Montauk.

5. Ritter is a principal of Maxim Capital and Maxim Growth.

6. Respondent Maxim Capital became chartered as a New York limited liability company on May 22, 1996. Ritter was Maxim Capital’s Chief Executive Officer and Managing Director.

7. Maxim Growth became chartered as a Delaware limited partnership on May 21, 1997. Maxim Growth’s General Partner was Maxim Capital.

III. FINDINGS OF FACT

8. Ritter is not now registered in Maryland as a broker-dealer or broker-dealer agent, or with the NASD in any capacity. Maxim Growth and Maxim Capital are not registered in Maryland or with the NASD as broker-dealers.

9. Ritter is not now registered nor has he ever been registered in Maryland as an investment adviser or investment adviser representative. Nor has Maxim Growth or Maxim Capital ever been registered in Maryland as an investment adviser.

10. The Securities Division has no record of an application for securities registration or claim of securities exemption or preemption as a federal covered security under the name “Maxim Growth Fund, LP” or “Maxim Capital, LLC”.

11. During the early 1990s, Ritter, then a registered stockbroker, solicited Maryland resident George Abbe to invest with him. For a time, the investments that Mr. Abbe purchased through Ritter appeared on the books and records of the brokerage firms where Ritter worked. Later, Ritter began offering and selling investments through his company Maxim Capital. Those investments were not executed through any registered broker-dealer.

12. While still affiliated with the firm of First Montauk, Ritter provided Mr. Abbe with a business card for Maxim Capital that specified that Ritter was the CEO and President. The business card misrepresented that Maxim Capital offered securities through First Montauk Securities Corp., and cleared through Schroeder Wertheim.

13. Beginning around mid-1999, Ritter convinced Mr. Abbe to transfer monies to him for various purposes, including for investment in Maxim Capital.

14. On or around April 15, 1999, Ritter obtained money from Mr. Abbe in exchange for a short-term promissory note in favor of Mr. Abbe in the amount of \$10,000, promising to pay Mr. Abbe the principal plus an 8% return on the investment within a matter of weeks.

15. On or around April 20, 1999, Ritter caused Mr. Abbe to invest \$20,000 in a Maxim Capital limited partnership – Maxim Growth. Ritter provided Mr. Abbe with a “Limited Partnership Agreement” dated April 20, 1999, which specified that the “purposes of the Partnership are to . . . achieve above average capital appreciation by investing in a multi-strategy approach, concentrated growth investing and opportunity trading”

16. Subsequently, around the end of April 1999, Mr. Abbe wrote to Ritter, requesting that his \$10,000 note to Maxim Capital be converted into the Maxim Growth. Ritter sent Mr. Abbe correspondence dated August 1, 1999, on Maxim Capital letterhead, that implicitly verified Mr. Abbe's investment in Maxim Growth.

17. In the August 1999 letter, Ritter claimed that "[t]he [Maxim Growth] [F]und produced a 26% return on your partnership interest The primary objective of the fund will focus on long-term investments in 'core' holdings in high growth companies."

18. In January 2000, Ritter wrote to Mr. Abbe with a report on the "fourth quarter operating performance for the Maxim Growth Fund LP." Ritter claimed that the fund "produced a 13% net increase on your partnership interest."

19. When Ritter left First Montauk, Mr. Abbe transferred monies from his First Montauk account to Ritter for investment in Maxim Capital.

20. On or about April 30, 2002, Ritter caused Mr. Abbe and his wife to invest \$50,000 towards the Maxim venture. In a promissory note dated April 30, 2002 and executed and guaranteed by Ritter individually and as Managing Director for Maxim Growth, Ritter promised Mr. Abbe that he would return Mr. Abbe's principal investment and credit his Maxim Growth account by \$25,000 by June 20, 2002.

21. By letter dated April 25, 2002, Ritter wrote to the Abbes on Maxim Growth letterhead and confirmed the terms of their \$50,000 investment. Ritter advised the Abbes that their "total capital interest in both [Maxim Capital and Maxim Growth] is currently \$74,000," which Mr. Abbe understood to be owed separate and apart from his and his wife's \$50,000

investment with Ritter. Furthermore, Ritter claimed that he received commitments “for roughly six million dollars in new capitalization” to enable him “to secure additional investors.”

22. Ritter further advised Mr. Abbe in his letter dated April 25, 2002 that “[o]ver the next several weeks, I will be establishing Maxim Fund Management LLC, Maxim Capital LP, Maxim Trading LP and Blacksheep Investments.” Ritter claimed that he planned to concentrate his investment strategy on high tech growth holdings, as he anticipated that the NASDAQ would double over the next 36 months. Ritter also claimed that he would be making significant company enhancements.

23. Over the period from April 1999 to April 2003, at Ritter’s urging, Mr. Abbe made a series of wire transfers to Ritter and/or his companies. Ritter led Mr. Abbe to believe that a portion of those monies were needed for the purpose of paying special assessments relating to Maxim Growth or Maxim Capital.

24. Beginning mid-2002 to around February 2003, Mr. Abbe began requesting a return of his principal and interest. Ritter began stringing Mr. Abbe along, suggesting that any day he would return Mr. Abbe’s investment monies. In fact, Mr. Abbe was unable to obtain any return of his principal or interest in response to his demands for payment.

25. In October 2003, Ritter e-mailed Mr. Abbe in response to Mr. Abbe’s request for information regarding the status of his investments. Ritter stated that he would “forward . . . the details on the restructuring details as it relates to the Partnership efforts. I would like to recover some losses before I terminate business altogether in the LP. I have to recover 750[,000] from last year alone. Not a big task. In fact [t]hat may be nothing more than a weeks [sic] trading profit with resources to trade. You know, trading power”

26. In that same e-mail, Ritter solicited Mr. Abbe for additional funds. Ritter stated, “On the other matter of the new C corp being formed. Few thousand in expenses and your help. Send me a money order for 500 overnight. I need the cash on [M]onday. If you can send it blank, then great. If not, put my name on it. Not to hassel [sic] you but I will be honest. My restruct!uring [sic] will include debt restructuring that I am on the line for personally. Also basic corporate filing, legal website, initial funding, employee expenses are very real. Few hundred thousand immediately if done right.”

27. In a separate e-mail dated October 18, 2003, Ritter e-mailed Mr. Abbe that “[t]he LP is finished. Losses will be distributed to you proportionately . . . roughly 750k last year I expect that your principal is fine because I would like to see you not lose that. But even principal loans are at risk in every business that goes under. I will call you next week one more time this year to finalize repayment and the date you will have it.”

28. Ritter and/or his companies maintained accounts at various financial institutions, including at least two bank accounts at JP Morgan Chase and Greenpoint Bank of New York, a bank account at Citibank NA, a brokerage account at Smith Barney/Citigroup, and two brokerage accounts at Ameritrade.

29. On May 7 and 8, 2002, Mr. Abbe wired Ritter \$5,000 and \$25,000, respectively. The monies went into an account at Greenpoint Bank titled in the name of Maxim Growth for which Ritter had signatory authority. The money was used by Ritter to pay \$27,000 by check to two individuals. The check, No. 0098 dated April 15, 2002, bore the notation “Max Cap/Max Growth.”

30. Mr. Abbe wired Ritter monies that went into two accounts at Ameritrade. On July 11, 2001, Mr. Abbe wired \$10,000 into Ritter's Ameritrade account No. 769-263234, a personal account for which Ritter was the sole signatory. In February, Mr. Abbe wired Ritter a total of approximately \$12,000 that went into Ameritrade account No. 769-263421 in the name of Maxim Growth. Both of the Ameritrade accounts were used by Ritter almost exclusively to purchase options on the Nasdaq 100 Index.

31. Mr. Abbe also wired Ritter monies that went into a personal account at Greenpoint Bank in the name of Ritter and his wife at that time, Stacey Rosenblatt. The account was used to pay personal expenses including mortgage payments, home improvement items, clothing and dining.

32. Maryland resident Gary Capistrant began dealing with Ritter when Ritter was an agent at D. Blech. Mr. Capistrant made investments through Ritter that appeared on the books and records of the brokerage firms where Ritter worked, including D. Blech.

33. In 1999, Ritter solicited Mr. Capistrant to invest in Maxim Growth. Capistrant wired Ritter \$7,200 – monies withdrawn from First Montauk – towards an investment in Maxim Growth. Mr. Capistrant wired the monies from his account to Maxim Growth's account at Chase Manhattan Bank.

34. In return for Mr. Capistrant's \$7,200 investment, Ritter gave Mr. Capistrant a "Limited Partnership Agreement" dated April 20, 1999 (the same as the one provided to the Abbes). Mr. Capistrant understood from Ritter that his investment monies would be pooled with monies from other investors and that Ritter, as general partner, would invest the funds to make a

profit. Mr. Capistrant received no disclosures other than what was provided in the Limited Partnership Agreement.

35. Ritter led Mr. Capistrant to believe that there were approximately 40 investors in the Maxim Growth Fund, although he saw no proof of that. Ritter also led Mr. Capistrant to believe that he was one of the smaller investors in Maxim Growth.

36. Mr. Capistrant did not receive any account statements with respect to his investment in Maxim Growth. Ritter sent him several letters, however, updating him as to the purported performance of Maxim Growth, including a letter in August 1999 and one in January 2000. Substantively those were the same letters received by the Abbes regarding Maxim Growth.

37. At no time did Mr. Capistrant receive any 1099s regarding Maxim Growth. In April 2000, Mr. Capistrant received a letter from Ritter, accompanied by a Schedule K-1 relating to Maxim Growth, claiming that the year-end value was \$11,891 with taxable capital gain of \$3,332.52. Mr. Capistrant did not receive any K-1s in subsequent years.

38. In 2001, Ritter told Mr. Capistrant that he needed short-term funding for Maxim Growth. In exchange for an agreement that Maxim Growth would re-pay the monies along with a “special dividend of \$8,000,” Mr. Capistrant agreed to invest \$10,000. Subsequently, by letter dated November 29, 2001, Ritter verified the “short-term financing” and the “special dividend or interest payment” of \$8,000. Ritter also agreed in writing to “increase [Mr. Capistrant’s] existing interest in the Partnership by said amount.” Ritter confirmed “the First Guarantor of the loan as Maxim Growth Fund LP and the Second Guarantor as David Ritter.”

39. Pursuant to the “short-term financing” arrangement, Mr. Capistrant wired \$10,000 to Ritter on November 29, 2001. The monies were transferred from Mr. Capistrant’s account at First Union National Bank to the Maxim Growth account at Ameritrade where monies were invested almost exclusively in options on the NASDAQ 100 Index.

40. In December 2001, Mr. Capistrant extended the term of the “short-term loan provided under the letter of agreement dated November 29, 2001” to “on or before July 1, 2002.”

41. In March 2002, Mr. Capistrant sent Ritter a letter demanding “immediate repayment . . . of my short-term loan to Maxim Growth Fund in the amount of \$10,000.” At that time Mr. Capistrant believed that he was owed \$11,891 because Ritter confirmed that that amount was his balance as of December 31, 1999.”

42. In November 2002, Mr. Capistrant once again extended repayment on the “short-term loan”, to February 1, 2003. Mr. Capistrant wrote that “[i]t is my understanding that, concurrent with our verbal agreement of March 27, 2002 to convert my equity position to a debt position, my outstanding balance is at least \$30,000.”

43. Numerous times, including in the Fall of 2002, Ritter promised to repay Mr. Capistrant the monies owed to him under the investment documents that Ritter executed. The monies, however, have not been repaid.

44. Ritter failed to provide Mr. Abbe and his other investors with information, prior to the date of numerous solicitations to invest or otherwise provide money to him, that he was the subject of numerous indictments, judgments and/or liens.

45. In September 2001, the IRS in New York obtained a tax lien against Ritter.

46. In December 2002, Ritter was the subject of a criminal information filed by the State's Attorney for Palm Beach County, Florida on charges of: a scheme to defraud, grand theft over \$100,000 (a first degree felony) and four counts of issuing a worthless check.

47. Around December 2002, Solomon Smith Barney obtained a judgment against Maxim Capital in the amount of more than \$190,000 in the Supreme Court for Suffolk County,

IV. CONCLUSIONS OF LAW

48. Respondents Maxim Growth and Maxim Capital violated Section 11-501 of the Securities Act by selling securities that were not registered, exempt or federal covered securities.

49. Respondents Maxim Growth and Maxim Capital violated Section 11-401 of the Securities Act by acting as an unregistered broker-dealer, agent, investment adviser or investment adviser representative.

50. Respondents Maxim Growth and Maxim Capital violated the antifraud provisions of Section 11-301 of the Securities Act .

51. Respondents Maxim Growth and Maxim Capital violated the investment advisory antifraud provisions of Section 11-302 of the Securities Act.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that::

1. Respondents Maxim Growth and Maxim Capital cease and desist permanently from violating Sections 11-301, 11-302, 11-401 and 11-501 and any other provision of the Securities Act and the rules promulgated under it;
2. Respondents Maxim Growth and Maxim Capital are barred permanently from engaging in the securities or investment advisory business in the State of Maryland;
3. Respondents Maxim Growth and Maxim Capital are each assessed a civil penalty in the amount of \$100,000, which amount will be offset by any restitution made, within thirty days of the date of this order, on a pro rata basis to the defrauded investors.

SO ORDERED:

DATED: _____, 2005

Melanie Senter Lubin
Securities Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Final Order was mailed, first class postal, on this
2nd day of May, 2005 to:

James D. Ritter, Individually and as Principal of:
Maxim Growth Fund, LP
Maxim Capital, LLC
c/o Michael B. Raphan, Esquire
2949 Long Beach Road
Oceanside, NY 11572

and

Julie L. Tewey
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