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Forward Sales, Exchange Funds and Zero Cost Collars *3DAdvisors, LLC Special Report Update*

February 9, 2005

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This *Special Report* updates our original report (11/03/04) on the use of forward sales contracts, exchange funds and zero cost collars by corporate executives, with a focus on forward sales contracts. We have chosen to highlight the use of these derivative transactions by insiders because they continue to be important indicative behavior covered in a number of our regular reports, but also because they are now receiving increased scrutiny by the SEC. Several new companies are covered in this report, and the Appendix lists other examples where the use of these derivative transactions has occurred since the original report last November. Note: We are not attempting to cover *all* forward sales for which there is information, just those where we feel the behavior is noteworthy.

Special Reports are published periodically on topics of general interest to 3DAdvisors, LLC subscribers.

Companies in this Special Report

- ▶ Apollo Group Inc. (NASDAQ: APOL)
- ▶ CompuCredit Corp. (NASDAQ: CCRT)
- ▶ Flextronics International Ltd. (NASDAQ: FLEX)
- ▶ Integra LifeSciences Holdings Corp. (NASDAQ: IART)
- ▶ Openwave Systems Inc. (NASDAQ: OPWV)

Discussion of 3DAdvisors Findings

In our almost 25 years of tracking and analyzing insider behavior, there are few behaviors that have attracted our interest as much as efforts to cover up selling by key insiders. At one time, it was the executive that would phone us to tell us why his selling wasn't important. Then there were those situations where insiders would go through much effort to warn us, usually through their legal departments, not to talk too much about their "insignificant" selling. Of course, when such things happened, we were only provoked to dig deeper. Our scrapbook of old InvestNet (our first company), and then First Call (our second) wins is jammed with examples related to such behavior.

Today, vehicles such as the forward sale and the 10b5-1 trading plan have provided opportunities for insiders to quietly monetize their positions that didn't exist 20 years ago. Using these strategies, today's executives can now trim major portions of their positions and, when doing it right, can avoid the scrutiny of the both the press and majority of the investment professionals. Some things never change, though. When we spot similar motivations (i.e. obfuscation) connected with these new techniques, we are drawn to them as much as we were to the old techniques.

In this light, we are issuing our latest report covering recent forward sales and other, similar, derivative transactional activity (exchange funds, zero cost collars, etc.) that have caught our attention. Certainly, we are not reporting on all of such transactions that are occurring. We are instead focusing on those that have piqued our interest. (For a definition of each of these derivative transaction types, see the first special report published on 11/03/04. It can be retrieved at our web site using the ticker symbol SRPT.)

In this report, we focus on cleverly disguised (using forward sales) selling by family members of Vice Chairman and COO of CompuCredit (NASDAQ:CCRT), **Richard Gilbert**, among other company insiders. Then there's the pickup in pace of forward sales by Apollo Group (NASDAQ:APOL) Director (and founder's son), **Peter Sperling**. We also note extensions of forward sales by insiders mentioned in past 3DA reports: Ball Corp's (NYSE:BLL) **William Stiritz**; Fifth Third Bancorp (NASDAQ:FITB) EVP, **Michael Baker** and Lamar Advertising's (NASDAQ:LAMR) **Charles Lamar**.

We have other examples of interesting behavior that we are not highlighting at this time, one of which concerns the early stages of put-writing by Ivax (NYSE:IVX) founder, **Philip Frost**. Though he has not stepped up with enough volume to interest us, the fact stands that he has started writing puts (exercisable at \$14) on Ivax shares. Of course, this early bullish behavior (he has to do more volume to convince us) is potentially the flip-side of the surreptitious selling that we are observing in so many companies at this time.

Apollo Group Inc. (NASDAQ: APOL)

We have become accustomed to the steady stream of forward sales entered into by Apollo founder **John Sperling** over the last few years. Secondly, we have come to expect a certain amount of them by his son as well. **Peter Sperling**, Senior V.P. and director, however, had traditionally entered into fewer of these than his father. This appears to be changing though as he has recently become more aggressive with his use of the forward sale vehicle.

Between November 4, 2004 and January 31, 2005, as Apollo shares rallied out of their 12 month lows, then fizzled, Sperling entered into a string of forward sale contracts. The first, entered into on November 4th, just before the rally began, was for 250,000 shares (expiration date 11/5/2007). As Apollo shares moved higher, he entered into more commitments to deliver shares. On December 30th, with the shares trading in the \$82 range, he entered into another contract, this time to deliver 500,000 shares by January 2, 2008. By January 31, the shares had moved a bit lower to the \$78 range and he entered into a third contract to deliver another 250,000 shares (expiration date 2008). In all, he has committed to deliver 1,000,000 shares since early November. This in

addition to the 663,731 shares he delivered, in late January, upon expiration of older forward sale agreements.

Figure 1. APOL Daily Closing Price, March 1, 2004 through February 7, 2005. Blue diamonds are the dates where Peter Sperling entered into forward sales contracts. Source: Reuters and APOL SEC Filings.



In addition to the above, Sperling is involved in another contract calling for the delivery of an additional 750,000 shares, expiring in July of this year. To us, it is interesting to see the pace of his forward sale commitments pick up with Apollo shares off their highs. Granted, Sperling continues to own plenty of shares, but his holdings have clearly been reduced. As of 9/31/2003, he held 16.27 million shares. By 10/31/04, his totals had dropped to 14.6 million. Assuming full delivery of the forward contract expiring in July, his total drops to 13.85 million. Then there are the 1 million shares he has committed to deliver pursuant to his recently entered into contracts, which would ultimately move him down to 12.85 million.

Certainly, he continues to hold a large stake in the Company. It will be important to see if he continues to commit to sell shares forward at his new, steadier, pace. We will be monitoring Apollo closely.

CompuCredit Corp. (NASDAQ: CCRT)

Vice Chairman, COO **Richard Gilbert** is no derivative transaction novice. To the untrained eye, it would appear that Gilbert has yet to sell any shares since he sold into the lockup expiration over five years ago. But upon closer look, he has actually been using forward sales by which he has managed to stealthily diversify his holdings without anyone noticing, a pattern that dates back to 2001.

In May 2001, just after the issue dropped precipitously from \$60 to \$15 in a matter of months, Gilbert entered into his first forward sale covering 180,000 shares. That contract was closed when he delivered the shares in May 2003. Four months later, with the issue once again under pressure, he picked up his pace, this time pledging to deliver 375,000 shares by August 2005. But as that contract remains open, Gilbert has again surfaced with a third forward sale, only there's an interesting twist to this recent transaction.

Late last year, Gilbert established Gilbert & Gilbert LLP, a family limited partnership, to which his family members have contributed their CompuCredit shares in exchange for membership units of the partnership. Between January 10th and January 12th, family member contributions (and Gilbert's own small contribution) nearly doubled the size of the partnership's holdings. Two weeks after the family traded in their shares, the partnership pledged nearly its entire CCRT position (375,855 shares) on January 27th to an undisclosed third party using a forward sale in exchange for \$8.9 million, or roughly \$23 per share, a \$5 discount (18%) to the market price.

Figure 2. CCRT Daily Closing Price, March 1, 2004 through February 7, 2005. Blue diamond is where the Gilbert & Gilbert LLP (a family limited partnership controlled by Richard Gilbert) entered into a forward sales contract. Source: Reuters and CCRT SEC Filings.



We are always attentive to an insider's activity when it involves shares held by their family members. In this case, Gilbert pooled together his family members' shares so that they could quickly monetize the position through a derivative transaction intended to evade the watchful eye of shareholders and analysts. Gilbert now has nearly 30% of his holdings tied up in forward sales contracts.

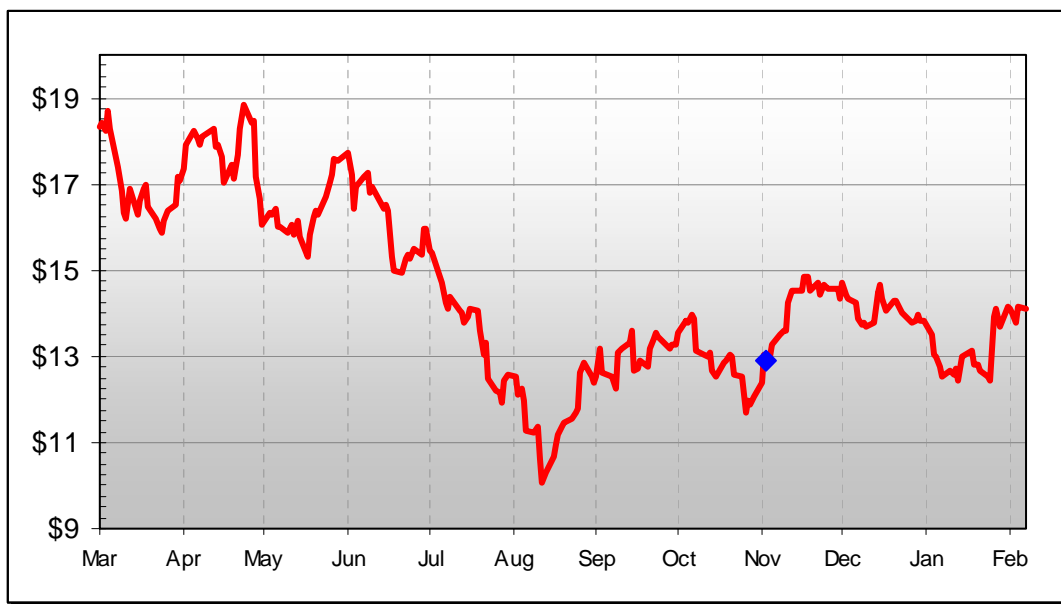
We should point out that Gilbert isn't the only CompuCredit exec to have distributed shares over the past few months. Between November 11th and January 13th five additional insiders sold, in the open market, a total of 145,667 shares from \$22 to

\$26. Though it might not seem that aggressive, this round of selling actually is the heaviest we've seen by a converging group of execs at this company since four insiders sold in the February 2000 lockup expiration. Leading the sellers was CFO **J. Paul Whitehead** who sold 74,667 shares, equal to 85% of his holdings, under the cover of a 10b5-1 trading plan, while Director **Thomas Rosencrants** sold 50,000 shares (25% of his position) of his own. This is a development that we're going to be looking into further.

Flextronics International Ltd. (NASDAQ: FLEX)

On October 25th, Flextronics warned that its sales for the second quarter might fall short of expectations due to a previously-announced delay with its \$2.5 billion outsourcing deal with Nortel. The issue was off 11% on the news. Just nine days later on November 3rd, and on the same day that the issue returned to late-October prices, COO **Michael McNamara** entered into a forward-sale contract to deliver 360,000 shares to an undisclosed third party by January 2006. In exchange for the shares, McNamara received an upfront cash payment of \$4.02 million, selling the shares at a slight discount to market. Not only was this just the second disposition by a FLEX insider in the past six months (the longest period of relative inactivity since 1996-1997), but it also marked the first derivative transaction we've ever encountered at the Company. Nevertheless, his activity didn't end there. On November 18th, he sold an additional 150,000 shares out of his common stock holdings at \$14.66. The two transactions combined only trimmed his holdings by less than 20%, but the real story here is the stealthy forward-sale transaction.

Figure 3. FLEX Daily Closing Price, March 1, 2004 through February 7, 2005. Blue diamond is where Michael McNamara entered to a forward sale contract. Source: Reuters and FLEX SEC Filings.



We instantly took interest since at the time of the transaction, shares of Flextronics were trading nearly 32% off their 52-week high. We became even more curious when the Company's chief financial officer of eight years, **Robert Dykes**, abruptly resigned weeks later on December 14th to take the same position at Juniper Networks. All reports from the Company paint an amicable break and smooth transition to newly appointed CFO, **Thomas Smach**, but we question the validity of that considering the very next day, Chairman, CEO **Michael Marks** sold 51,000 shares at \$14 – his first transaction since he sold in March 2004 at 22% higher prices.

It's quite possible that McNamara's forward sale gives us a clue when Dykes might have notified senior management of his decision to resign. Along with Marks' impulsive distribution, the two transactions probably give a good indication that this might have been quite a shakeup to Flextronics' upper ranks. As expected, Dykes has since sold a significant portion of his holdings, and he isn't the only insider to surface with further distributions. On February 4th, Chairman **Richard Sharp**, delivered 3 million shares, equal to 50% of his holdings, to an undisclosed party pursuant to the settlement of a zero-cost collar he entered into back in February 2000. Sharp bought the puts at a split adjusted price of \$25.69 and wrote the calls at \$60.22.

We are definitely going to be keeping a close eye on the Company for any further signs, especially since the issue hasn't been able to hold any gains above McNamara's selling price.

Integra LifeSciences Holdings Corp. (NASDAQ: IART)

Integra LifeSciences Holdings might not be the most recognized name in the medical products arena, but it managed to catch the attention of **George Soros**, who as of April 2004 owned 652,894 shares (2.3% of the outstanding shares) through SFM Domestic Investments LLC, for which he is the sole managing member. But what has us interested in IART are two derivative transactions by the Company's highest ranking insiders.

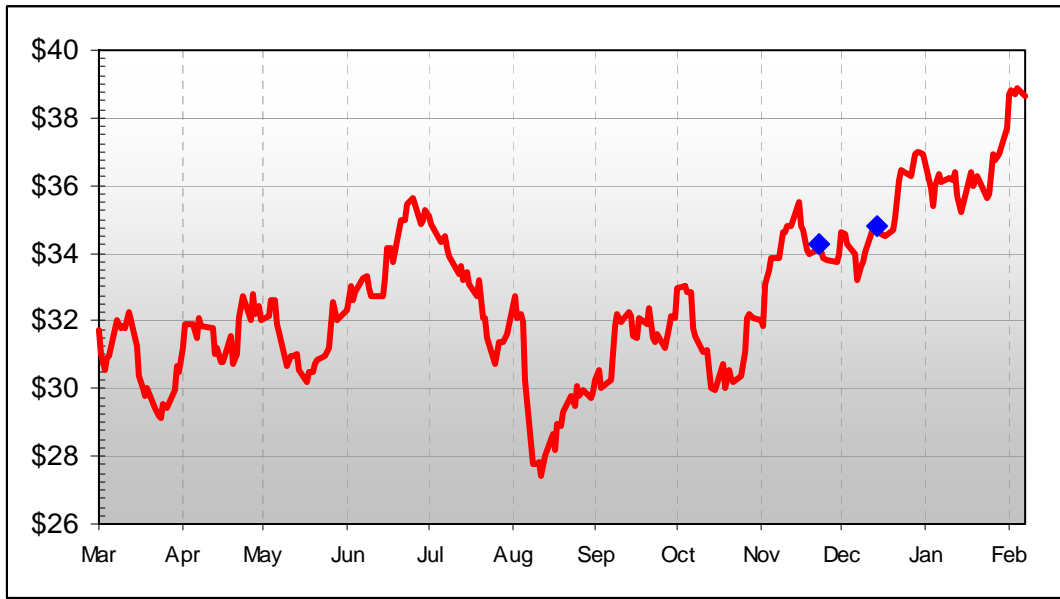
On November 23rd, Chairman **Richard Caruso** entered into a variable forward sale contract to sell 600,000 shares, held by Trust Partnership L.P., a general partnership of which he is a partner and the president, to Credit Suisse First Boston Capital at an undisclosed price. Though the sale trimmed his holdings by 8%, the distribution marks only his second sale of Company shares since he assumed his chairman position in 1992. His only prior sale occurred in May 2001, when he sold 83,250 shares at \$16.

Shortly after Caruso surfaced with his transaction, President, CEO **Stuart Essig** pledged 500,000 shares of his own to Credit Suisse First Boston, only Essig's sale put a much more significant dent in his personal holdings. The transaction trimmed his actionable position (common stock plus exercisable options) by an eye-opening 74% and represents his second largest distribution since he joined the Company back in 1997. He last sold 772,027 shares in November 2003 at roughly \$33, just before the stock closed the year at \$28.

But these aren't the only two taking some stock off the table. George Soros sold 199,000 shares from November 19th to December 6th, driving his 2004 sales to 399,000

shares equal to 47% of his ownership stake. This was the first time that we'd seen Soros sell since he sold 354,000 shares in late 2001 at \$25.

Figure 4. IART Daily Closing Price, March 1, 2004 through February 7, 2005. Blue diamond is the dates where Richard Caruso (11/23/04) and Stuart Essig (12/14/04) entered into forward sales contracts. Source: Reuters and IART SEC Filings.



One potential explanation for Essig's behavior is the generous equity awards he was provided in the third and fourth quarters of 2004. On July 27th Essig was granted a stock option for 250,000 shares which will begin vesting in July 2005, as well as a restricted stock grant for 750,000 shares that vest upon his retirement. Then, on December 17th he was awarded another option grant for 200,000 shares. This was the first time we've seen an IART exec receive multiple grants in such a short period of time. But from all our experience analyzing forward sale contracts, we might have credited the timing of a derivative transaction to the vesting of equity awards in the past, but never the granting of such awards. And since two other key shareholders that sold concurrently didn't receive equity awards during this period, we feel comfortable attributing these sales to market timing.

Openwave Systems Inc. (NASDAQ: OPWV)

Openwave has been on our radar since October, after four executives filed Form 4s disclosing derivative transactions over four years after the fact. Not only did this behavior catch our attention, but we suspect that the SEC was equally interested. Some more recent activity has us once again turning our attention to the Company.

On December 1st Chairman **Don Listwin** entered into a Forward Purchase Agreement (forward sale) to sell 1.5 million shares to an undisclosed private party.

Listwin didn't attempt to conceal this trade (its was disclosed on Table 1 of the related Form 4) as we saw with the above-mentioned transactions, but we suspect the possible SEC interest in the earlier OPWV transactions brought about Listwin's candiddness. Listwin had been Openwave's president and chief executive since September 2000, but turned over the Company to outsider **David Peterschmidt** (former CEO of Inktomi) in early November 2004. This sale, which trimmed his holdings by 64%, happens to be his first disposition in the past five years, this after he had been steadily acquiring shares (1.66 million since October 2003) through the exercise of stock options, many of which had been re-priced twice, once in 2001, down from \$258 to \$23, and then again in 2002 from \$23 to down to \$3.

Figure 5. OPWV Daily Closing Price, March 1, 2004 through February 7, 2005. Blue diamond is the date where Don Listwin entered into a forward sale contract. Source: Reuters and OPWV SEC Filings.



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Appendix: Forward Sales, Exchange Funds and Zero Cost Collars

3DAdvisors, LLC Special Report Update

Type ¹	3DA Rpt?	Ticker	Company	Mkt Cap	Insider	Position	Trans Date	Price on Trans Date	Price on 10/26/2004	Shares	Holdings Reduction ²
FS		APOL	Apollo Group	14.62B	Peter Sperling ³	SVP, Director	1/31/2005	\$78.18	\$78.00	250,000	7%
FS		APOL	Apollo Group	14.62B	Peter Sperling	SVP, Director	12/30/2004	\$80.83	\$78.00	500,000	7%
FS		APOL	Apollo Group	14.62B	Peter Sperling	SVP, Director	11/4/2004	\$62.96	\$78.00	250,000	7%
FS	✓	BLL	Ball	4.95B	William Stiritz	Director	11/4/2004	\$41.62	\$43.95	800,000	90%
EF		BRCM	Broadcom	10.81B	William Ruehle	CFO	12/15/2004	\$32.55	\$32.19	35,000	2%
FS		CCRT	CompuCredit	1.31B	Richard Gilbert	COO	1/27/2005	\$27.15	\$28.60	375,855	14%
FS	✓	FITB	Fifth Third Bancorp	28.32B	Michael Baker ⁴	EVP	12/17/2004	\$47.12	\$47.96	54,000	5%
FS		FLEX	Flextronics	8.0B	Michael McNamara ⁵	Div. Pres.	11/3/2004	\$12.89	\$14.09	360,000	15%
FS		GRMN	Garmin	6.13B	Donald Eller	Director	12/16/2004	\$55.06	\$56.24	200,000	20%
FS		GWR	Genesee & Wyoming	666M	Mortimer Fuller	CB, CEO	12/1/2004	\$27.70	\$24.88	225,000	32%
FS		IART	Integra Lifesciences	1.11B	Stuart Essig	P, CEO	12/14/2004	\$34.78	\$38.63	500,000	74%
FS		IART	Integra Lifesciences	1.11B	Richard Caruso	CB	11/23/2004	\$34.25	\$38.63	600,000	8%
FS	✓	LAMR	Lamar Advertising	4.42B	Charles Lamar ⁶	Director	12/13/2004	\$42.44	\$42.24	300,000	13%
FS		MHR	Magnum Hunter	1.26B	Richard Frazier	EVP	11/15/2004	\$12.89	\$14.35	106,707	19%
FS		MHR	Magnum Hunter	1.26B	Gary Evans	P, CEO	11/12/2004	\$13.09	\$14.35	500,000	11%
FS	✓	OPWV	Openwave Systems	892M	Donald Listwin	Director	12/1/2004	\$13.16	\$13.08	1,500,000	64%
FS		PVTB	PrivateBancorp	691M	Hugh McLean	Mng. Director	1/26/2005	\$32.97	\$34.10	56,000	17%
FS		PVTB	PrivateBancorp	691M	Gary Collins	Mng. Director	1/26/2005	\$32.97	\$34.10	75,000	27%
FS		QSFT	Quest Software	1.47B	Vincent Smith	CB, CEO	12/10/2004	\$14.79	\$15.14	700,000	2%
FS		RGS	Regis	1.82B	Myron Kunin	CB	12/22/2004	\$46.36	\$40.85	60,000	5%
FS		SBSA	Spanish Broadcasting Sys.	656M	Raul Alarcon	CB, CEO, P	12/1/2004	\$10.93	\$10.06	350,000	1%
EF		SUNW	Sun Microsystems	14.56B	Edward Zander ⁷	P, COO	5/25/2000	\$14.00	\$4.30	26,210	1%

Footnotes:

¹ FS = Forward Sale; EF = Exchange Fund; ZCC = Zero Cost Collar

² Holding Reductions are the percentage reduction in actionable position (common stock + exercisable options). If blank, insider provided insufficient data to perform calculation

³ Sperling's three forward sales combined reduced his holdings by 7%

⁴ Shares sold by Baker's wife

⁵ In addition to the forward sale, McNamara sold an additional 150,000 shares on 11/18/2004

⁶ 100,000 of the shares were sold from trusts for his children. Over 1/2 of Lamar's holdings are tied up in forward sales.

⁷ Zander's Form 4 was filed late on 2/02/2005