Press Release

SEC Charges Dallas-Based Trader With Front Running

FOR IMMEDIATE RELEASE
2013-93

Washington, D.C., May 24, 2013 — The Securities and Exchange Commission today announced fraud charges and an asset freeze against a trader at a Dallas-based investment advisory firm who improperly profited by placing his own trades before executing large block trades for firm clients that had strong potential to increase the stock's price.

The SEC alleges that Daniel Bergin, a senior equity trader at Cushing MLP Asset Management, secretly executed hundreds of trades through his wife's accounts in a practice known as front running. Bergin illicitly profited by at least $520,000 by routinely purchasing securities in his wife's accounts earlier the same day he placed much larger orders for the same securities on behalf of firm clients. Bergin concealed his lucrative trading by failing to disclose his wife's accounts to the firm and avoiding pre-clearance of his trades in those accounts. Bergin also attempted to hide his wife's accounts from SEC examiners.

"Bergin betrayed the trust of his clients by secretly using information about their trades to gain an unfair trading advantage and reap massive profits for himself," said Marshall S. Sprung, Deputy Chief of the SEC Enforcement Division's Asset Management Unit.

According to the SEC's complaint filed yesterday in federal court in Dallas, many investment advisers to institutions employ traders to manage their exposure to market price risks and place these large client orders in advantageous market centers with sufficient trading quantities that minimize unfavorable price movements against client interests. Bergin is the trader primarily responsible for managing price exposures related to client orders for equity trades.

"Bergin's misconduct is particularly egregious because his firm depended on him to manage market exposure and risk for its investments. Instead, he pitted his clients' financial interests against his own," said David R. Woodcock, Director of the SEC's Fort Worth Regional Office.

According to the SEC's complaint, Bergin realized at least $1.7 million in profits in his wife's accounts from 2011 to 2012 as a result of his illegal same-day or front-running trades. More than $520,000 of the $1.7 million represents profits from approximately 132 occasions in which Bergin placed his initial trades in his wife's account ahead of clients' trades.

According to the SEC's complaint, more than $1.8 million was withdrawn since July 2012 from a trading account belonging to Bergin's wife that was undisclosed to his firm. Most of the withdrawals were large transfers to her bank account.

The SEC's complaint names Bergin's wife Jacqueline Zaun as a relief defendant for the purpose of recovering Bergin's illegal trading profits in her accounts.

In order to halt Bergin's ongoing scheme, the SEC requested and U.S. District Court Judge Barbara Lynn granted an emergency court order freezing the assets of Bergin and Zaun.

The SEC's complaint alleges that Bergin violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 as well as Section 17(j) of the Investment Company Act of 1940 and Rule 17j-1. The complaint seeks disgorgement, prejudgment interest, and a penalty as well as a permanent injunction against Bergin.

The SEC's investigation was conducted in the Fort Worth Regional Office by Frank Goodrich and Barbara Gunn of the Asset Management Unit. The litigation will be led by Jennifer Brandt and Mr. Goodrich. The examination that led to the investigation was conducted by Mary Walters, Anthony McNeal, Charles Amsler, Brandon Whitaker, Carol Hahn, Dennis Rogers, and Kim Shaw of the Fort Worth office.

The SEC appreciates the assistance of the U.S. Attorney's Office for the Northern District of Texas and the Federal Bureau of Investigation.

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Related Materials

- SEC Complaint