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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. FRANK J. FURINO, Defendant.	CV 05 1282 2005 Civ. ____ (__) COMPLAINT JOHNSON, J. MANN, M.J.

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against Defendant Frank J. Furino ("Furino"):

SUMMARY

1. This case involves a fraudulent scheme in which Furino, a clerk for a floor broker on the New York Stock Exchange ("NYSE"), secretly provided confidential information about large customer orders to a day trader ("Day Trader"), who then "traded ahead" of these orders and profited at the expense of the floor broker's customers.

2. Furino was employed by floor broker Lawrence Helfant, LLC ("Helfant"), as a clerk on the NYSE floor. In the course of his employment, Furino learned about large block orders that customers sent to Helfant for execution. Large orders can affect the market price for

a stock by affecting the supply or demand for the stock. As part of his job, Furino was required to keep confidential information regarding customer orders.

3. Furino secretly informed the Day Trader about the block orders after Helfant received the orders, but before Helfant executed the orders. The Day Trader then purchased or sold the same security in anticipation of profiting from a short-term change in the price of the security caused by the execution of the block order a short time later.

4. Between August 2000 and December 2001, the Day Trader placed at least 58 trades in accordance with this scheme, and made a gross profit of more than $300,000. For example, on October 25, 2000, after Furino secretly informed the Day Trader about a customer's order to purchase 84,500 shares of Computer Associates International, Inc. ("Computer Associates") stock, the Day Trader bought 17,000 shares of Computer Associates stock at an average price of $28.27 per share. Within one minute, the Day Trader sold the 17,000 shares of Computer Associates stock through Helfant at $29 per share, at the same time that Helfant's customer's buy order for 84,500 shares was executed. The rise in share price from $28.27 to $29 per share resulted in the Day Trader making a gross profit of approximately $12,337.

5. As compensation for providing customer order flow information, Furino solicited and received from the Day Trader undisclosed cash payments of approximately $2,500 to $10,000 per month. Additionally, the Day Trader executed trades through Helfant, and Furino benefited from the commissions.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77t(b), and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d). In this

action, the Commission is seeking: (a) permanent injunctive relief; (b) disgorgement plus prejudgment interest; (c) civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, U.S.C. § 78u(d); and (d) such further relief as the Court may deem appropriate.

7. This Court has subject matter jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

8. Venue lies in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 77aa, because, among other things, certain of the transactions, acts, practices, and courses of business occurred in the Eastern District of New York. For example, the Day Trader placed some trades from offices located on Long Island. Additionally, Furino lives in Port Washington, New York.

9. The Defendant, directly or indirectly, singly and in concert, made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein.

STATUTES AND RULE ALLEGED TO HAVE BEEN VIOLATED

10. The Defendant has engaged, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

DEFENDANT

11. Furino, age 48, is a resident of Port Washington, New York. He was employed by Helfant from December 1997 until his employment was terminated in February 2005. Furino has held his Series 25 license since May 1999, and has held a Series 7A license since November 2004.

RELATED PERSON AND ENTITY

12. The Day Trader was associated with several broker-dealers, including a broker-dealer with offices in New York City and Long Island, during the course of conduct alleged herein.

13. Helfant was a floor broker at the NYSE and a registered broker-dealer. Helfant was acquired by the Jefferies Group, Inc. in the third quarter of 2001.

FACTUAL ALLEGATIONS

Furino's Employment as a Clerk for Helfant

14. Furino was a floor clerk for Helfant, a NYSE floor broker. Broker-dealers often retain the services of one or more independent floor brokers to execute orders placed by the broker-dealers' customers, or for the broker-dealers' proprietary accounts. Floor brokers receive orders that the firm's customers have placed, and execute those orders on the exchange floor on behalf of their customers at the best possible price. As a floor clerk, Furino received orders from Helfant's customers and distributed them to the firm's floor brokers for execution.

15. Large orders can affect the market price for a stock by affecting the supply or demand for the stock. Accordingly, institutional customers have an expectation that when they transmit block orders to a floor broker, such as Helfant, the floor broker (and its employees

involved in the order execution process) will not communicate their order information to someone who plans to trade based on that information.

16. Helfant's compliance manual required, among other things, that all employees "not accept a gratuity or undisclosed compensation from a client" and "not have any interest in a client's account."

17. Helfant's policy statement concerning prohibitions on insider trading required, among other things, that "no [Helfant] employee should divulge confidential client information to individuals other than [Helfant] employees. No [Helfant] employee shall use confidential information of a client for personal benefit, for the benefit of [Helfant] or for the benefit of another client. The same policy statement noted that "[t]he fact that an institutional investor plans to engage in a substantial trade of certain securities could be considered material information with respect to those securities."

18. Furino, an employee of Helfant, was required to adhere to the terms of the compliance manual and the policy statement, and act in accordance with standard industry practice.

<u>Furino Informed the Day Trader of Unexecuted Customer Orders</u>

19. From August 2000 through December 2001, Furino regularly gave the Day Trader information about large orders that customers had routed to Helfant for execution, but that Helfant had not yet executed.

20. Furino typically called the Day Trader from the floor of the NYSE and secretly informed the Day Trader of the security, price, quantity and side (buy or sell) associated with certain large customer orders.

The Day Trader Traded Ahead Of The Floor Broker's Customer Orders

21. After receiving the information about a particular large customer order from Furino, the Day Trader bought or sold (including short sales) the same security in expectation of a movement in the stock price as a result of Helfant executing the large customer order.

22. After, or while, the Helfant floor brokers executed the customer's purchase or sell order for the particular security, and the stock price increased or decreased, the Day Trader sold the position that he had purchased, or covered the position that he had sold.

23. The Day Trader closed out his position (e.g., sold a position he had purchased, or covered a position he had sold short) by executing the trade through Helfant's floor brokers.

24. The Day Trader executed such trades ahead of Helfant customer orders on at least 58 different occasions between August 2000 and December 2001. The Day Trader profited from the short-term change in prices caused by the subsequent execution of the customer order. Several examples are described below.

25. On January 4, 2001, Furino secretly informed the Day Trader about a large customer order to sell shares of Union Carbide stock. The Day Trader then sold short 20,500 shares of Union Carbide stock at an average price of $54.48 per share. The Day Trader sold this stock before Helfant executed the customer order. The Day Trader then bought 20,000 shares through Helfant's floor brokers at a price of $54 per share, at the same time that the customer sell order for 64,200 shares was executed. The fall in share price resulted in the Day Trader making a gross profit of approximately $9,344.

26. On January 9, 2001, Furino secretly informed the Day Trader about a large customer order to purchase shares of Computer Sciences Corp. stock. Before Helfant executed the customer order, the Day Trader bought 20,000 shares of Computer Sciences stock at an

average price of $53.07 per share. The Day Trader then sold the 20,000 shares through Helfant's floor brokers at a price of $53.50 per share, at the same time that the customer buy order for 65,900 shares was executed. The rise in share price resulted in the Day Trader making a gross profit of approximately $8,562.

27. On March 13, 2001, Furino secretly informed the Day Trader about a large customer order to purchase shares of Enron Corp. stock. Before Helfant executed the customer order, the Day Trader bought 25,000 shares of Enron stock at an average price of $60.86 per share. The Day Trader then sold the 25,000 shares of Enron stock through Helfant's floor brokers at a price of $61.10 per share, at the same time that the customer buy order for 68,200 shares was executed. The rise in share price resulted in the Day Trader making a gross profit of approximately $5,906.

28. Furino sometimes delayed routing customer orders to Helfant's floor brokers in order to allow the Day Trader extra time to take positions ahead of customer orders.

<u>The Fraudulent Scheme Harmed the Floor Broker's Customers</u>

29. As a result of this scheme, Helfant often executed its customer orders at prices less favorable to its customers than it otherwise would have. For example, when short selling ahead of sell orders, the Day Trader sold shares at the highest offer price available. If the Day Trader had not sold these shares, Helfant's customers could have received the price received by the Day Trader. Instead, Helfant's customers had to sell their shares at a lower price and therefore received inferior executions on their orders.

30. For example, on February 15, 2001, after Furino secretly informed the Day Trader of a customer order to buy shares of McDonalds Corp. The Day Trader bought 31,500 shares of the stock at an average price of $29.41 per share from 9:34 a.m. to 9:40 a.m. At 9:41 a.m.,

Helfant executed the customer order at a price of $29.64. If the Day Trader had not bought ahead of the pending order, Helfant's customer could have received a better execution price at or near the price at which the Day Trader bought his shares.

The Day Trader Paid Furino Undisclosed Compensation for Customer Order Information

31. The Day Trader compensated Furino through undisclosed cash payments and commissions.

32. In exchange for access to Helfant's order flow, the Day Trader paid Furino between $2,500 to $10,000 in cash each month from approximately August 2000 through December 2001.

33. As a further means of compensating Furino for receipt of order flow information, the Day Trader placed orders with Helfant. The commissions associated with executing these orders benefited Furino.

34. In fact, during a taped conversation between Furino and the Day Trader, Furino stated that the Day Trader had to "show volume," i.e., route trades through Helfant, in order to receive order flow information from Furino.

FIRST CLAIM FOR RELIEF

Furino Violated Section 17(a) of the Securities Act,
Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

35. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 34 above.

36. By virtue of the conduct described above, Furino, in the offer or sale, and in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1)

employed devices, schemes, or artifices to defraud; (2) obtained money or property by, or otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the purchasers or sellers of numerous securities.

37. As part of and in furtherance of this violative conduct, Furino participated in a fraudulent scheme. Through this scheme, Furino, in breach of his duty to Helfant's customers, and/or in breach of his duty to his employer, Helfant, secretly communicated confidential information concerning Helfant's customer orders to the Day Trader, who then used this information to trade ahead of the customer's order.

38. Furino knew, or was reckless in not knowing, that he was breaching a duty by conveying confidential customer order information to the Day Trader, and in accepting undisclosed compensation from the Day Trader.

39. Furino also knew, or was otherwise reckless in not knowing, that he was defrauding Helfant, and/or its customers, through this scheme.

40. This scheme was material. For example, Helfant's customers would have wanted to know that Furino was secretly disclosing their confidential order to a day trader whose intent was to trade ahead of that order.

41. By reason of the acts and practices described above, Furino, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

RELIEF SOUGHT

WHEREFORE, the plaintiff Commission respectfully requests that this Court enter a Final Judgment:

A. Permanently enjoining Furino, his agents, servants, employees, and attorneys, and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

B. Ordering Furino to disgorge all ill-gotten gains he received as a result of the violations alleged in this Complaint.

C. Ordering Furino to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

D. Granting such other relief as the Court shall deem just and proper.

Dated: March 9, 2005
New York, New York

Respectfully submitted,

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