

10 CIV 2217

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

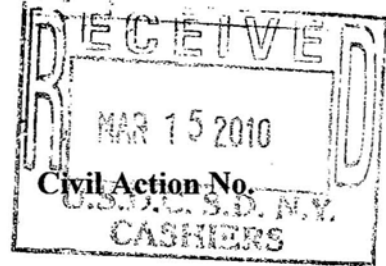
U.S. SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

vs. :

BROCO INVESTMENTS, INC. and
VALERY MALTSEV, :

Defendants. :



COMPLAINT

Plaintiff United States Securities and Exchange Commission ("Commission")
alleges as follows:

SUMMARY

1. The Commission files this emergency action to halt an ongoing fraud by BroCo Investments, Inc. ("BroCo") and its president, Valery Maltsev ("Maltsev"). This action alleges violations of the federal securities laws by Maltsev, BroCo, and/or individuals acting in concert with them, by repeatedly hijacking the online brokerage accounts of unwitting investors using stolen usernames and passwords and subsequently placing unauthorized trades through the compromised accounts. In almost every instance, prior to intruding into these accounts, using an account they controlled at Genesis Securities LLC ("Genesis"), the Defendants acquired positions in the same securities that were the subjects of the unauthorized trades in the compromised accounts. Minutes after acquiring these positions, and without the compromised accountholders' knowledge, the Defendants, and/or individuals acting in concert with them, placed scores

of unauthorized buy orders at above-market prices using the compromised accounts. After these unauthorized buy orders were placed, the Defendants sold the positions held in their own account – positions they had established only moments earlier – at the artificially inflated prices. In other instances, the Defendants profited by covering short positions previously established in their account while placing unauthorized sell orders through the compromised accounts at substantially lower prices. From August 2009 to the present, these transactions have created the appearance of legitimate trading activity and have artificially affected the prices of at least thirty-eight issuers.

2. From August 2009 to December 2009, as a result of coordinating their own trades with those effected during the unlawful intrusions into online brokerage accounts, the Defendants realized unlawful trading profits of at least \$255,532. Online broker-dealers whose customers' accounts were compromised during that time period suffered losses of at least \$603,000 as a result of the Defendants' fraudulent conduct.

3. On February 26, 2010, BroCo attempted to withdraw \$110,000 from its Genesis account via wire transfer. Then, on March 2, 2010, BroCo attempted to withdraw an additional \$200,000 from the account via wire transfer. Both withdrawals requested that the funds be wired BroCo's bank account in Cyprus. Genesis has not yet processed these requests.

4. By virtue of their conduct, the Defendants have engaged in and, unless enjoined, will continue to engage in, violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

5. The Commission brings this action, and this Court has jurisdiction over this action, pursuant to authority conferred by Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(a) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 77u(e) and 78aa].

6. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred within this District, and pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because some of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within this District.

7. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, and the means and instruments of transportation and communication in interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

DEFENDANTS

8. Defendant BroCo Investments, Inc. was formed in April 2008 and is located in St. Petersburg, Russia, according to account opening documents at Genesis, where BroCo maintains a securities trading account. According to the company's website, however, BroCo is located in Limassol, Cyprus.

9. Defendant Valery Maltsev is believed to be a thirty-six year old Russian citizen residing in or around St. Petersburg, Russia. According to account opening

documents at Genesis, Maltsev is BroCo's president and only officer, and has sole trading authorization for BroCo's securities account.

FACTS

The Defendants' Account Intrusion Scheme

10. Beginning in at least August 2009 and continuing to the present, the Defendants engaged in an elaborate scheme in which they manipulated, via account intrusions, the markets for shares of at least thirty-eight issuers. The Defendants' *modus operandi* was similar for each intrusion. The Defendants first purchased thinly traded securities at the prevailing market prices using their own online brokerage account at Genesis. Shortly thereafter, the Defendants and/or individuals acting in concert with them, using stolen usernames and passwords, intruded into the online brokerage accounts of unsuspecting individuals. The Defendants and/or individuals acting in concert with them then used these intruded accounts to place a series of unauthorized buy orders (for shares of the same issuers purchased only moments earlier in the Defendants' account), typically at prices well above the prevailing market prices for those thinly traded securities. Immediately or shortly thereafter, the Defendants capitalized on the artificially inflated share prices of the targeted securities by selling the shares previously acquired in their account. In other instances, the Defendants profited by covering short positions previously established in their account while placing unauthorized sell orders through the compromised accounts at substantially lower prices.

11. Unwitting accountholders were victimized in several ways. Securities held in the victims' online brokerage accounts were oftentimes liquidated in order to finance the unauthorized trading. Many times, the victims whose accounts were hijacked

to make unauthorized purchases lost money when the securities returned to their pre-manipulation prices.

12. Online broker-dealers whose customers' accounts were compromised and used by the Defendants to make unauthorized trades suffered losses in excess of \$600,000. In addition, the Defendants' manipulative trading caused damage to unknowing market participants who were attracted to the artificially inflated prices.

13. From August 17, 2009 through the present, the BroCo account at Genesis realized profits of at least \$255,532 from its trading in the following thirty-eight securities, at or around the time of unauthorized trading in compromised accounts: Enterra Energy Trust, ExpressJet Holdings, Inc., Icagen, Inc., Catalyst Pharmaceutical Partners, Inc., Akeena Solar, Inc., American Technology Corp., Comstock Homebuilding Companies, Inc., Magellan Petroleum Corp., Amcore Financial, Inc., Majesco Entertainment Company, Akorn, Inc., Synthesis Energy Systems, Inc., iGo, Inc., Biofuel Energy Corp., WPT Enterprises, Inc., BMB Munai, Inc., China INSOnline Corp., Alliance Fiber Optic Products, 8x8 Inc., Active Power, Inc., Ante4, Inc., Antigenics, Inc., China Direct Industries, Inc., EF Johnson Technologies, Inc., dELIA*s, Inc., Arotech Corp., First M & F Corporation, NewBridge Bancorp, Endwave Corporation, Rosetta Genomics, Ltd., Cybex International, Inc., Vestin Realty Mortgage II, Inc., Clearfield, Inc., Parlux Fragrances, Inc., Compton Petroleum Corp., Xerium Technologies, Newcastle Investments Corp., and AmeriServ Financial, Inc. See Exhibit A, attached hereto.

14. On February 26, 2010, BroCo attempted to withdraw \$110,000 from its Genesis account via wire transfer. Then, on March 2, 2010, BroCo attempted to withdraw an additional \$200,000 from the account via wire transfer. Both withdrawals

requested that the funds be wired BroCo's bank account in Cyprus. Genesis has not yet processed these requests.

15. The Defendants' trading in AmeriServe Financial Inc. ("ASRV") is representative of the scheme employed by BroCo and Maltsev with respect to the shares of the other thirty-seven issuers.

AmeriServe Financial, Inc.

16. AmeriServe Financial Inc. is a publicly traded, Johnstown, Pennsylvania-based bank. The company's shares are traded on the NASDAQ Global Market under the symbol ASRV. From December 1 – December 20, 2009, ASRV traded an average of approximately 11,300 shares per day. On December 21, 2009, trading in ASRV increased more than twenty times, with 277,567 shares trading that day. At least 200,000 shares were bought or sold between BroCo's trades and the unauthorized trades placed through compromised Scottrade accounts. On that day, ASRV opened at \$1.60 per share and increased to an intraday high of \$1.80 per share.

17. On December 21, 2009, at 1:37 p.m. EST, BroCo bought 6,500 shares of ASRV at a price of \$1.51 per share.

18. Approximately one minute later, at 1:38 p.m., and continuing over the ensuing ten minutes, three accounts at Scottrade, Inc. ("Scottrade") were illegally accessed and, without the authorization or knowledge of the account holders, used to purchase 102,200 shares of ASRV at prices ranging from \$1.545 to \$1.828 per share.

19. From 1:39 p.m. until 1:49 p.m. – coinciding almost exactly with the intrusion time period (1:38 p.m. – 1:49 p.m.) – BroCo sold 80,000 shares of ASRV at prices ranging from \$1.70 to \$1.80 per share.

20. The 73,500 shares BroCo sold in excess of what it had previously purchased resulted in a short position.

21. Between 1:50 p.m. and 1:52 p.m., unauthorized trades were placed through the compromised Scottrade accounts, resulting in the sale of 73,500 shares at prices ranging from \$1.466 to \$1.74 per share.

22. From 1:50 p.m. to 1:52 p.m. – coinciding exactly with the intrusion time period – BroCo covered its short position, purchasing 73,500 shares at a price of \$1.55 per share.

23. By trading shares of ASRV within minutes of unauthorized trading through the compromised accounts, Maltsev and BroCo grossed \$141,500 in approximately fifteen minutes, realizing a net profit of \$17,760. The unauthorized purchase and sale orders in the intruded accounts during the ASRV intrusion resulted in losses of \$20,355.63 to the holders of the intruded accounts. In addition, Maltsev's manipulative trading caused damage to market participants who purchased shares of ASRV during the intrusion period.

COUNT I

Violations of Section 17(a) of the Securities Act
[15 U.S.C. § 77q(a)]

24. The Commission re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. As set forth more fully above, the Defendants, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

(a) knowingly or recklessly employed devices, schemes or artifices to defraud;

(b) knowingly, recklessly or negligently obtained money or property by means of untrue statements of material fact or by omitting 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

(c) knowingly, recklessly or negligently engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

26. By reason of the foregoing, the Defendants have violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT II

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

27. The Commission re-alleges and incorporates by reference paragraphs 1 through 23 above.

28. As set forth more fully above, the Defendants, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly:

- (a) employed devices, schemes or artifices to defraud;
- (b) 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
- (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

29. By reason of the foregoing, the Defendants have violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court:

I

Temporarily, preliminarily, and permanently restrain and enjoin the Defendants, and each of the Defendants' agents, servants, employees, attorneys, and all persons in

active concert or participation with them 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, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

II

Order the freezing of the Defendants assets and direct that all financial or depository institutions comply with the Court's Order. Furthermore, order that the Defendants immediately repatriate any funds held at any bank or other financial institution not subject to the jurisdiction of the Court, and that they direct the deposit of such funds into the registry of the Court, pending conclusion of this matter.

III

Order that the Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing, or disposing of, in any manner, any of their books and records of documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

IV

Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents and the taking of depositions, on 72-hours notice.

V

Order the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

VI

Order the Defendants to pay 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 [15 U.S.C. § 78u(d)].

VII.

Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



Suzanne J. Romajas (SR-4531)
Justin Chretien (Pro hac vice admission pending)
Thomas A. Sporkin
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Attorneys for Plaintiff

Dated: March 15, 2010

Exhibit A
to Plaintiff's Complaint

EXHIBIT A

BroCo Transactions at or Around the Time of Intrusions

Trade Date	Symbol	Market Class	Shares	Cost of Purchasing Shares	Proceeds From Sale of Shares	Profit/Loss	Time of BroCo Trades	Time of Unauthorized Trades in Intruded Accounts
8/17/2009	ENT	NYSE	6,900	\$8,143	\$8,694	\$551	12:18 p.m. - 12:41 p.m.	12:28 p.m. - 12:42 p.m.
8/17/2009	CMZ	NYSE	10,000	\$10,400	\$10,700	\$300	2:43 p.m. - 3:14 p.m.	2:40 p.m. - 3:16 p.m.
8/19/2009	XJT	NYSE	7,564	\$12,202	\$13,085	\$883	12:25 p.m. - 1:04 p.m.	1:06 p.m. - 1:09 p.m.
8/27/2009	XRM	NYSE	6,000	\$6,660	\$7,113	\$453	1:04 p.m. - 1:18 p.m.	1:15 p.m. - 1:19 p.m.
9/10/2009	NCT	NYSE	7,000	\$10,239	\$11,060	\$821	10:54 a.m. - 11:50 a.m.	11:45 a.m. - 11:51 a.m.
9/10/2009	ICGN	NasdaqGM	2,998	\$3,387	\$3,717	\$330	2:50 p.m. - 3:03 p.m.	3:04 p.m. - 3:08 p.m.
9/11/2009	CPRX	NasdaqCM	4,000	\$4,448	\$4,900	\$452	1:09 p.m. - 1:56 p.m.	1:39 p.m. - 2:02 p.m.
9/14/2009	NCT	NYSE	2,400	\$3,861	\$4,056	\$195	12:41 p.m. - 12:59 p.m.	12:43 p.m. - 12:55 p.m.
9/23/2009	AKNS	NasdaqCM	5,000	\$6,297	\$6,850	\$553	1:58 p.m. - 2:08 p.m.	1:58 p.m. - 2:28 p.m.
9/23/2009	ATCO	NasdaqCM	10,000	\$15,500	\$17,095	\$1,595	1:05 p.m. - 1:12 p.m.	1:06 p.m. - 1:15 p.m.
9/28/2009	CHCI	NasdaqCM	15,000	\$15,897	\$17,407	\$1,510	1:16 p.m. - 1:45 p.m.	1:18 p.m. - 1:45 p.m.
9/28/2009	MPET	NasdaqCM	31,741	\$45,022	\$48,900	\$3,878	12:02 p.m. - 1:01 p.m.	12:27 p.m. - 1:06 p.m.
10/2/2009	MPET	NasdaqCM	30,000	\$41,211	\$44,699	\$3,488	11:41 a.m. - 12:01 p.m.	11:45 a.m. - 12:16 p.m.
10/6/2009	AMFI	NasdaqGS	26,000	\$38,572	\$43,068	\$4,496	12:15 p.m. - 12:36 p.m.	12:31 p.m. - 12:51 p.m.
10/6/2009	COOL	NasdaqCM	35,300	\$49,229	\$52,696	\$3,467	12:44 p.m. - 12:57 p.m.	12:48 p.m. - 12:53 p.m.
10/7/2009	AKRX	NasdaqGM	32,500	\$41,687	\$43,635	\$1,948	12:24 p.m. - 12:41 p.m.	12:32 p.m. - 1:02 p.m.
10/8/2009	SYMX	NasdaqGM	40,500	\$47,587	\$53,764	\$6,177	11:51 a.m. - 12:10 p.m.	12:00 p.m. - 12:06 p.m.
10/8/2009	IGOI	NasdaqGM	47,505	\$57,948	\$62,231	\$4,283	1:45 p.m. - 2:12 p.m.	1:54 p.m. - 2:00 p.m.
10/13/2009	BIOF	NasdaqGM	78,000	\$90,608	\$107,125	\$16,517	11:33 a.m. - 12:59 p.m.	11:59 a.m. - 12:06 p.m.
10/21/2009	WPTE	NasdaqGM	134,300	\$147,962	\$161,940	\$13,978	1:01 p.m. - 1:26 p.m.	1:11 p.m. - 1:26 p.m.
11/2/2009	KAZ	AMEX	22,500	\$22,529	\$24,525	\$1,996	1:22 p.m. - 2:43 p.m.	2:27 p.m. - 2:39 p.m.
11/2/2009	CHIO	NasdaqCM	101,900	\$103,409	\$113,779	\$10,370	1:33 p.m. - 2:22 p.m.	1:43 p.m. - 2:36 p.m.
11/5/2009	AFOP	NasdaqCM	114,340	\$127,496	\$144,582	\$17,113	1:21 p.m. - 2:30 p.m.	1:59 p.m. - 2:13 p.m.
11/9/2009	EGHT	NasdaqCM	126,900	\$144,935	\$158,521	\$13,586	11:58 a.m. - 2:01 p.m.	12:20 p.m. - 12:27 p.m.
11/10/2009	ACPW	NasdaqGM	156,229	\$179,538	\$199,916	\$20,378	12:59 p.m. - 3:59 p.m. *	1:20 p.m. - 1:42 p.m.
11/13/2009	ANTF	OTCBB	44,600	\$50,835	\$53,903	\$3,068	12:21 p.m. - 12:38 p.m.	12:26 p.m. - 12:36 p.m.
11/13/2009	AGEN	NasdaqCM	50,477	\$53,740	\$54,515	\$775	12:02 p.m. - 12:15 p.m.	12:10 p.m. - 12:26 p.m.
11/16/2009	CDII	NasdaqGM	21,997	\$31,651	\$33,500	\$1,849	2:02 p.m. - 2:39 p.m.	2:16 p.m. - 2:23 p.m.
11/16/2009	EFJI	NasdaqGM	51,792	\$60,596	\$65,775	\$5,179	12:11 p.m. - 12:28 p.m.	12:12 p.m. - 12:30 p.m.
11/18/2009	DLIA	NasdaqGM	6,900	\$13,455	\$14,421	\$966	12:57 p.m. - 1:40 p.m.	1:03 p.m. - 2:03 p.m.
11/18/2009	ARTX	NasdaqGM	50,000	\$86,430	\$93,400	\$6,970	12:14 p.m. - 3:41 p.m.	12:20 p.m. - 12:34 p.m.
11/24/2009	FMFC	NasdaqGS	21,586	\$47,474	\$53,917	\$6,444	1:49 p.m. - 2:08 p.m.	1:52 p.m. - 1:58 p.m.
11/25/2009	NBBC	NasdaqGS	59,304	\$130,468	\$147,073	\$16,605	2:52 p.m.	2:53 p.m. - 2:56 p.m.
11/30/2009	ENVV	NasdaqGM	40,198	\$94,063	\$99,691	\$5,628	1:19 p.m. - 1:38 p.m.	1:14 p.m. - 1:44 p.m.
12/1/2009	ROSG	NasdaqGM	47,616	\$99,993	\$115,494	\$15,501	12:10 p.m. - 1:02 p.m.	12:23 p.m. - 12:28 p.m.
12/2/2009	CYBI	NasdaqGM	63,854	\$78,246	\$95,142	\$16,896	1:51 p.m. - 3:56 p.m.	1:52 p.m. - 2:00 p.m.
12/9/2009	VRTB	NasdaqGS	62,100	\$136,465	\$149,036	\$12,571	12:08 p.m. - 3:02 p.m.	1:48 p.m. - 1:59 p.m.
12/10/2009	CLFD	NasdaqGM	28,701	\$77,492	\$83,519	\$6,027	12:59 p.m. - 1:23 p.m.	1:14 p.m. - 1:19 p.m.
12/15/2009	PARL	NasdaqGS	45,338	\$98,836	\$108,811	\$9,975	1:11 p.m. - 1:30 p.m.	1:21 p.m. - 1:27 p.m.
12/21/2009	ASRV	NasdaqGM	80,000	\$123,740	\$141,500	\$17,760	1:30 p.m. - 1:49 p.m.	1:38 p.m. - 1:52 p.m.
					Profits	\$255,532		

* Note on 11/10/2009 ACPW: BroCo trading occurred almost exclusively before 1:45 p.m. (one trade at 3:59 p.m.)