UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	**Civil Action No. 1:20-cv-1911**
v.	)	
DOMINIC A. TROPIANO,	)	
Defendant.	)	

COMPLAINT

Plaintiff U.S. Securities and Exchange Commission ("SEC") alleges as follows:

1. The SEC brings this action against Defendant Dominic A. Tropiano for fraudulently engaging in unsuitable and unauthorized trading in the accounts of retail brokerage customers.

2. Tropiano's fraud involved placing more than 500 trades involving complex securities called leveraged exchange traded funds ("ETFs"). The leveraged ETFs Tropiano purchased were high-risk securities intended to be traded daily by sophisticated investors and not held for periods longer than one day. However, Tropiano's customers were retail investors, including elderly ones, who had only moderate risk profiles and long-term investment objectives. Although the investments were unsuitable for his customers, Tropiano recommended and purchased leveraged ETFs for at least 40 retail customer accounts and held the leveraged ETFs in those accounts for weeks and, in some cases, months. Tropiano also fraudulently traded leveraged ETFs for certain customers without their authorization.

3. As a result of Tropiano's fraudulent trading in leveraged ETFs, his customers sustained combined losses of more than $1 million.

4. While his customers suffered, Tropiano profited by receiving at least $115,000 in "bonuses" and commissions generated from his trading.

5. This lawsuit seeks to hold Tropiano responsible for his fraudulent trading at the expense of retail brokerage customers.

JURISDICTION AND VENUE

6. The SEC brings this action under Securities Act of 1933 ("Securities Act") Section 20(b) [15 U.S.C. §77t(b)] and Securities Exchange Act of 1934 ("Exchange Act") Sections 21(d) and (e) [15 U.S.C. §§78u(d) and 78u(e)].

7. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

8. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Many of the acts, practices, and courses of business constituting the violations alleged herein occurred within the Northern District of Ohio.

9. During the period at issue in this Complaint, Tropiano resided, worked, and engaged in the fraudulent trading described herein, in this District.

10. Tropiano directly and indirectly made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein, and will continue to do so unless enjoined.

DEFENDANT

11. **Dominic A. Tropiano**, age 41, is a resident of Shaker Heights, Ohio. From 2003 until April 2015, he was a registered representative at various broker-dealers in the Cleveland area. From April 2015 through June 2016, Tropiano was associated with Brokerage A, a broker-

dealer, as described below. While working in the securities industry, Tropiano held Series 7, 31, and 66 licenses.

OTHER RELEVANT ENTITY

12. **Brokerage A** was a registered broker-dealer with its principal place of business in Cleveland. Tropiano's former father-in-law founded Brokerage A's predecessor, and was Brokerage A's Chairman and indirect owner. On August 1, 2017, Brokerage A filed to withdraw its registration, and its withdrawal became effective on September 30, 2017.

RELEVANT SECURITIES

13. **Exchange traded funds** are SEC-registered investment companies that offer investors a way to pool their money in a fund that invests in stocks, bonds, or other assets. Most ETFs trading in the marketplace are index-based ETFs. These ETFs seek to track a securities index like the S&P 500 stock index and generally invest primarily in the component securities of the index. For example, the SPDR, or "spider" ETF, which seeks to track the S&P 500 stock index, invests in most or all of the equity securities contained in the S&P 500 stock index.

14. **Leveraged ETFs** are different from, and riskier than, traditional ETFs in that they seek to deliver multiples of the performance of the index or benchmark they track. Some leveraged ETFs are "inverse" or "short" funds, meaning that they seek to deliver the opposite of the performance of the index or benchmark they track. Some funds are both inverse and leveraged, meaning that they seek to achieve a return that is a multiple of the inverse performance of the underlying index or benchmark.

15. Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 09-31 (the "FINRA Notice") states that leveraged ETFs "are highly complex financial instruments that are typically designed to achieve their stated objectives on a daily basis." The FINRA Notice goes

on to say that such products "are typically unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets." The FINRA Notice further cautions that "their performance over longer periods of time can differ significantly from the performance (or inverse of the performance) of their underlying index or benchmark during the same period of time." The FINRA notice adds that "[t]his effect can be magnified in volatile markets."

16. The leveraged ETFs discussed herein are "securities," as that term is defined in the Securities Act and Exchange Act.

FACTS

A. Tropiano's Termination from His Prior Broker-Dealer Leads to His Association with Brokerage A

17. From August 2008 through April 2015, Tropiano was a registered representative of a registered broker-dealer in the Cleveland area ("Brokerage B").

18. In April 2015, Brokerage B terminated Tropiano's employment for repeated violations of Brokerage B's correspondence policies and for failing to report two complaints Tropiano had received.

19. In connection with his termination, Tropiano became subject to an agreement with Brokerage B prohibiting him from soliciting any of his former Brokerage B customers for one year after his termination.

20. At the time of his termination from Brokerage B, Tropiano was married to the daughter of Brokerage A's Chairman and indirect majority owner.

21. After his termination, Tropiano sought job advice from his father-in-law, Brokerage A's Chairman.

22. Brokerage A's Chairman knew that Tropiano was subject to an agreement with his previous employer prohibiting him from soliciting any of his former Brokerage B customers for one year after his termination. He nevertheless advised Tropiano that it was important to retain his customers and permitted Tropiano to bring his former customers over to Brokerage A. Pursuant to this arrangement, Tropiano would encourage his former customers to open accounts at Brokerage A. However, Tropiano would not become a registered representative of Brokerage A until his one-year non-solicitation period had expired.

23. Tropiano accepted the offer and ultimately brought 79 customer accounts from Brokerage B to Brokerage A.

24. Brokerage A's President, who was also a registered representative and the Chief Compliance Officer of Brokerage A, was the son of Brokerage A's Chairman and was Tropiano's brother-in-law at time.

25. Brokerage A's President enabled Tropiano to effect trades in the accounts of retail customers that Tropiano brought to Brokerage A even though he knew Tropiano was not registered with FINRA as a registered representative as required under Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

26. Brokerage A's President allowed Tropiano to open accounts for the customers that Tropiano brought to Brokerage A from Brokerage B, signed the new account forms as the registered representative for those customers, and Brokerage A's President's name appeared as the customers' representative on their account statements. However, the customers communicated with Tropiano, viewed him as their representative, and many of them did not even know who Brokerage A's President was.

27. Brokerage A's President additionally gave Tropiano access to Brokerage A's trading room and system and enabled Tropiano to effect trades in customer accounts.

28. During the year when Tropiano acted as a registered representative of Brokerage A without proper registration, Tropiano effected trades in 66 of the 79 retail customer accounts he brought from Brokerage B.

B. Tropiano Engaged in Unsuitable Trading in Leveraged ETFs

29. After starting at Brokerage A, Tropiano recommended trades in leveraged ETFs in at least 40 different retail customer accounts without a reasonable basis to believe that these transactions were suitable for these customers. In doing so, Tropiano regularly recommended the purchase and sale of leveraged ETFs and implemented buy-and-hold strategies for these securities in accounts of these retail customers.

30. The new account forms for these customers generally identified the customers' risk tolerance as "moderate" and their investment objective as "long term growth." None of the forms identified a riskier account objective.

31. None of these customers opened discretionary trading accounts, which would have permitted Tropiano to make investment decisions without prior approval from the customers.

32. Tropiano discussed investment strategies involving leveraged ETFs with certain customers and also sent emails to customers discussing his view that leveraged ETFs should be used to hedge against a market downturn.

33. The prospectuses for the leveraged ETFs Tropiano traded all cautioned that they were intended only for sophisticated investors and should not be held for periods longer than one day. Similarly, Brokerage A's Compliance Manual specifically referenced the FINRA Notice,

repeated its guidance that leveraged ETFs are intended to be held no longer than one trading session, and advised of risks of holding leveraged ETFs for longer periods.

34. Tropiano acted, at the very least, recklessly by performing no due diligence regarding the leveraged ETFs he purchased for customers. He failed to read the FINRA Notice, the prospectuses for the leveraged ETFs he purchased, or Brokerage A's Compliance Manual. Tropiano was, at a minimum, reckless in not knowing that leveraged ETFs were designed to be traded daily and not held for longer periods.

35. Instead, Tropiano held the leveraged ETFs for weeks, or in some cases months, in the customers' accounts, thus greatly magnifying the losses. Even as the customers' losses mounted, Tropiano failed to investigate why those losses were occurring, recommended no action to mitigate further losses, and continued to recommend to customers that they purchase and hold additional leveraged ETFs.

36. Tropiano's recommendations regarding the leveraged ETF trades were materially misleading because he did not bother to obtain a fundamental understanding of the unique risks, terms, and features of leveraged ETFs, including that the securities are intended to be traded daily. Tropiano thus lacked a reasonable basis to believe that the leveraged ETFs he recommended were suitable for any investor.

37. Tropiano's recommendations involving leveraged ETFs were also unsuitable on a customer-specific basis. Tropiano failed to perform any analysis of the suitability of leveraged ETFs for any particular customers in light of their investment objectives, risk profiles, and financial situations.

38. Tropiano had no reasonable grounds to believe these highly complex products were suitable for any of his customers, in view of their investment profiles.

39. Between at least August 2015 and June 2016, Tropiano recommended and effected more than 500 transactions, involving approximately 24 different leveraged ETFs, in at least 40 retail customer accounts. That trading resulted in the customers sustaining combined realized losses exceeding $1 million in addition to substantial unrealized losses.

40. Examples of Tropiano's unsuitable trading include the following:

41. **Customer 1**, then age 55, was a yoga instructor and Tropiano's customer at Brokerage B before transferring her account to Brokerage A in June 2015. Her account opening form identified her investment knowledge as "limited," her risk tolerance as "moderate," and her objective as "long-term growth."

42. On August 29, 2015, Tropiano emailed Customer 1, predicting a market crash. His email said: "I am going to start moving the portfolio into safety on Monday. I already started last week, but I am going to go more aggressive in preserving the assets. I think things are going to get a lot worse." Customer 1 responded: "Wow! That's really scary! I noticed you were moving things last week. I trust you Dominic. Make everything safe!"

43. Between August 2015 and June 2016, Tropiano repeatedly purchased and sold leveraged ETFs in Customer 1's account. Tropiano held leveraged ETFs in her account for up to 74 days, and held them for more than a week eight times.

44. Customer 1 did not know what leveraged ETFs were and did not realize Tropiano was buying risky securities for her account.

45. **Customer 2**, then age 63, was Tropiano's customer at Brokerage B before opening two accounts at Brokerage A in May and July 2015. Customer 2's new account form identified her risk tolerance as "moderate" and her investment objective as "long-term growth."

46. Tropiano effected several dozen leveraged ETF transactions in Customer 2's accounts, leading to large losses. Tropiano held leveraged ETFs in her accounts for up to 73 days, and held them for more than a week 21 times.

47. **Customer 3,** then age 58, was an antiques dealer; **Customer 4**, her husband, then age 57, was an adjunct professor; and **Customer 5**, Customer 3's mother, was a 91-year old widow. Customers 3, 4, and 5, were previously Tropiano's customers at Brokerage B.

48. After Tropiano's termination from Brokerage B, Customers 3, 4, and 5 collectively opened six accounts at Brokerage A that had a risk tolerance of "moderate" and an investment objective of "long term growth."

49. On their account opening documents, Customers 3 and 4 identified their investment knowledge as "moderate," while Customer 5 identified her knowledge as "limited."

50. Beginning in August 2015, Tropiano began recommending leveraged ETFs for Customer 3's account, and later, for her husband's and mother's accounts.

51. Tropiano held leveraged ETFs in Customer 3's accounts for up to 53 days, and held them for more than a week 11 times.

52. Tropiano held a leveraged ETF in Customer 4's account for 42 days.

53. Even though Tropiano knew that leveraged ETFs were unsuitable for Customer 5, he held two leveraged ETFs in her accounts for periods of five and 42 days.

C. Tropiano Engaged in Unauthorized Trading

54. In addition to engaging in unsuitable trading, Tropiano also traded in certain customer accounts without their authorization.

55. Between August and September 2015, Tropiano purchased leveraged ETFs in the accounts of **Customer 6** and Customer 6's 85-year old mother, **Customer 7**.

56. In September 2015, Customer 6 asked Tropiano why his account value had dropped so much. Tropiano responded to Customer 6 via email, writing: "What I did was hedge your account with some instruments that hedge against the market going down. . . Please trust me with this strategy. It will work out."

57. Customer 6 emailed back the next day: "The S&P is down less than 8% and we are now down 20% or more. I'm not willing to gamble that your intuition is correct, and I'm shocked that you'd take such risks for me. Did you do the same for my mom?"

58. Tropiano had in fact made similar purchases in Customer 7's account. Indeed, between June and September 2015, Customer 7's account decreased from 99% mutual funds to 55% mutual funds and 38% leveraged exchange-traded products.

59. Tropiano placed the above-described trades without the knowledge or consent of either Customer 6 or Customer 7, and without their written or oral authorization to place the trades.

D. While his Customers Suffered, Tropiano Received Commission-Based Compensation Before Being Terminated by Brokerage A

60. During Tropiano's time at Brokerage A, his unsuitable and unauthorized trading resulted in his customers sustaining combined realized losses exceeding $1 million in addition to substantial unrealized losses.

61. In April 2016, immediately following the conclusion of his one-year non-solicitation agreement with Brokerage B, Brokerage A hired Tropiano as a registered representative.

62. In May 2016, Brokerage A paid Tropiano $100,000. While Brokerage A characterized the $100,000 payment as a "signing bonus," in reality, Brokerage A made the payment as a result, and based on the amount, of the commissions Tropiano generated for Brokerage A the previous year.

63. Shortly thereafter, Brokerage A paid Tropiano an additional $15,000 in commissions generated from Tropiano's trading during the previous year, including the above-described fraudulent trading.

64. Tropiano would only remain a registered representative of Brokerage A for approximately six weeks. Less than two months later, in early June 2016, Brokerage A terminated Tropiano's employment as a result of customer complaints.

COUNT I

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5

65. Paragraphs 1 through 64 are realleged and incorporated by reference.

66. As more fully described in paragraphs 1 through 64, Tropiano, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and prospective purchasers of securities.

67. As described in more detail in paragraphs 1 through 64, Tropiano acted with scienter in that he knowingly or recklessly made the material misrepresentations and omissions and engaged in the fraudulent scheme identified above.

68. By reason of the foregoing, Tropiano 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].

COUNT II

Violations of Section 17(a) of the Securities Act

69. Paragraphs 1 through 64 are realleged and incorporated by reference as though fully set forth herein.

70. By engaging in the conduct described in paragraphs 1 through 64 above, Tropiano, in the offer and sale of securities, by the use of the means and instruments of interstate commerce, directly or indirectly:

a. employed devices, schemes and artifices to defraud;

b. 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 light of the circumstances under which they were made, not misleading; and

c. engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

71. Tropiano intentionally, recklessly, and negligently engaged in the conduct described above.

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

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Tropiano committed the violations charged and alleged herein.

II.

Enter an Order of Permanent Injunction restraining and enjoining Tropiano, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with

Tropiano who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation 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] and Rule 10b-5 [17 CFR § 240.10b-5] thereunder.

III.

Issue an Order requiring Tropiano to disgorge the ill-gotten gains received as a result of the violations alleged in this Complaint, including prejudgment interest.

IV.

With regard to Tropiano's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Tropiano appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Retain jurisdiction of this action in accordance with principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other relief as this Court deems appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the SEC hereby requests a trial by jury.

Respectfully Submitted,

Dated: August 27, 2020

/s/ Benjamin J. Hanauer

Benjamin J. Hanauer (IL No. 6280156)
hanauerb@sec.gov
Charles J. Kerstetter (PA No. 67088)
kerstetterc@sec.gov
Christopher H. White (IL No. 6280031)
whitech@sec.gov
175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
Phone: (312) 353-7390
Facsimile: (312) 353-7398
Attorneys for Plaintiff
U.S. Securities and Exchange Commission