

requested payouts to other investors, strongly suggesting that Defendants are currently attempting to raise money from new investors to repay current investors.

2. Defendants, directly and indirectly engaged in and, unless enjoined, will continue to engage in transactions, acts, practices and courses of business which violate Section 17(a) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. § 77q(a)), 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).

3. The Commission brings this action to enjoin such transactions, acts, practices and courses of business and for other relief, pursuant to Sections 20(b) and 20(d) of the Securities Act (15 U.S.C. § 77t(b), (d)) and Sections 21(d) and 21(e) of the Exchange Act (15 U.S.C. § 78u(d)-(e)).

JURISDICTION

4. This court has jurisdiction 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).

THE DEFENDANTS

5. Brad A. Weaver, age 33, is a resident of Chicago, Illinois. He currently holds himself out as the president of Beta. Weaver was employed as a registered representative by Raymond James Financial Services, Inc., ("Raymond James"), a registered broker-dealer, from 1999 until April 15, 2003. Weaver resigned from Raymond James after an internal review determined that Weaver commingled customer funds with his own funds.

6. Beta Asset Management, Inc. is an Illinois corporation with a principal place of business in Chicago, Illinois. Beta is not registered with the Commission in any capacity.

OTHER ENTITIES AFFILIATED WITH WEAVER

7. Beta Capital Partners, L.P. (“Beta Partners”) is a limited partnership formed by Weaver in early 2004. According to the partnership’s offering memorandum, the minimum investment for a partnership share is \$250,000. The offering memorandum also states that the partnership will engage primarily in intermediate term trading of Rydex mutual funds shares and Invesdex Marketplus Security.

8. Beta Capital Management, LLC (“Beta Capital”) is an Illinois limited liability company incorporated by Weaver on March 12, 2004. Beta Capital is the general partner of Beta Partners.

9. Beta Capital Advisors, LLC (“Beta Advisors”) is an Illinois limited liability company incorporated by Weaver on March 12, 2004. Beta Advisors is the investment adviser of Beta Partners.

FACTUAL BACKGROUND

Weaver’s Misrepresentations to Investors Concerning Error Account Trades

10. Beginning in at least March 2003, while he was still associated with Raymond James, Weaver falsely told at least five investors that he could make profitable options trades in error accounts at Raymond James.

11. Broker-dealers such as Raymond James maintain error accounts for depositing securities and funds resulting from erroneous trades. An example of an erroneous trade is the purchase of 1,000 call options when a customer requested the purchase of only 100. In that instance, the broker-dealer must sell the 900 calls purchased in error in order to correct the error. The correction may result in a profit or a loss. Weaver told his investors that he could “capture” profitable errors in options trades from Raymond James’ error accounts for his investors.

12. Weaver represented that he would receive no compensation for error account trades on behalf of this investors. He further represented that his goal was to increase his investors' asset base to a level high enough so that he could trade in hedge funds.

13. Based on Weaver's oral representations, at least five investors gave Defendants over \$10 million for error account trading. One of those investors, a North Carolina resident ("North Carolina Investor"), transferred approximately \$2.9 million to Beta in 23 separate transactions from March 2003 through July 2004. The North Carolina Investor made each transfer after Weaver informed him that an error account trade was available, the amount of the trade and the profit to be obtained from the trade. After each alleged trade, the North Carolina Investor received a document purporting to be a trade confirmation showing the simultaneous purchase and sale of options for a profit.

14. Contrary to Defendants' representations, it is not possible to trade in the error accounts of broker-dealers such as Raymond James. According to Raymond James, the firm retains all profits from erroneous trades. The firm also maintains policies and procedures that effectively prevent its registered representatives or other persons from obtaining access to the firm's error accounts.

15. Although Defendants' purported error account trading strategy could not have existed, the North Carolina Investor received payments from Beta totaling \$5.6 million between July 2003 and June 2004, representing a profit of approximately \$2.7 million, just months after his initial investments. Since June 2004, Defendants have repeatedly represented to the North Carolina investor that he has an additional \$5 million to \$14 million in profits in his "account."

16. Another investor ("Investor B") also gave Weaver and Beta money for so-called error account trading. However, despite repeated demands to have his money returned, Weaver

and Beta still owe Investor B over \$7 million in principal, not counting any promised returns. A third investor who gave Defendants \$90,000 for error account trading has not received any payouts. A fourth investor has had his principal investment of approximately \$370,000 returned to him, but has not received any promised profits.

**Weaver's Misrepresentations Regarding
the Transfer of Funds to a Limited Partnership**

17. In approximately August 2004, the North Carolina Investor told Weaver that he needed to withdraw funds by September 15 so that he could make federal and state estimated income tax payments.

18. Weaver told the North Carolina Investor that, unless he agreed to sign documents for the purchase of a limited partnership interest in Beta Partners, an entity Weaver had recently formed, it would be difficult for him to receive the funds by September 15. In addition, Weaver told the North Carolina Investor that, if he did not agree to sign the limited partnership documents, the Internal Revenue Service would withhold 30 percent of the amount distributed to him. Based on Weaver's representations, the North Carolina Investor signed the documents.

19. Weaver subsequently told the North Carolina Investor that he had rolled-over his purported remaining error trading profits into Beta Partners, but the North Carolina Investor never received the promised funds. At least three other investors also rolled-over their money into Beta Partners.

20. In the fall of 2004, after repeated requests from the North Carolina Investor for the return of his profits, Weaver told the North Carolina Investor that he had opened an account at Invesdex, Ltd. with investor funds totaling \$30 million. Invesdex Ltd ("Indvesdex") is the

licensor of a security called MarketPlus, which competes with products such as exchange traded funds and mutual funds that cater to active management.

21. On October 26, Weaver sent the North Carolina Investor a copy of a computer screen page from Invesdex purportedly showing a balance of \$30 million in the account. Weaver, in fact, had opened a simulation account that permits potential clients to simulate the results of a trading model without risking actual funds. Weaver used the simulation account balance to mislead the North Carolina Investor into believing the account had actual funds.

22. In a November 12, 2004 letter, Weaver falsely represented to the North Carolina Investor that his share of the \$30 million account balance at Invesdex was \$14,862,000. The letter from Weaver contains a fake co-signature by a Paul Seritelli, EVP of Operations of Invesdex, Ltd. There is not and never has been a Paul Seritelli employed by Invesdex.

23. Contrary to Weaver's misrepresentations, Beta Partners did not deposit any funds with Invesdex until December 7, 2004. At that time, Beta Partners deposited only \$30,000 with Invesdex. There has been no change in the amount invested since December 7, although Weaver requested a withdrawal of approximately \$1,700 within the last week which has not been processed.

24. Since at least June, 2004, Weaver has made repeated representations to at least five investors that they will receive payouts on their investments, but he has not made any of those payments as promised. Weaver has represented to the North Carolina investor that he will receive \$10 million on January 14, 2005.

Weaver's Fraudulent Conduct is Ongoing

25. On December 20, 2004 Weaver made numerous misstatements to a prospective investor regarding his ongoing, successful, error account trading, and the returns generated by Beta Capital, in an attempt to obtain a substantial investment.

COUNT I

Violations of Section 17(a)(1) of the Securities Act

26. Paragraphs 1 through 25 are realleged and incorporated by reference as though fully set forth herein.

27. By engaging in the conduct described above, Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, have employed devices, schemes and artifices to defraud.

28. Defendants intentionally or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

29. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act (15 U.S.C. § 77q(a)(1)).

COUNT II

Violations of Sections 17(a)(2) and (3) of the Securities Act

30. Paragraphs 1 through 25 are realleged and incorporated by reference as though fully set forth herein.

31. By engaging in the conduct described above, Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, have:

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

32. Defendants made the untrue statements and omissions of material fact and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

33. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act (15 U.S.C. § 77q(a)(2)-(3)).

COUNT III

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

34. Paragraphs 1 through 25 are realleged and incorporated by reference as though fully set forth herein.

35. By engaging in the conduct described above, Defendants, in connection with the purchase and sale of securities, by the use of means or instrumentalities of interstate commerce and of the mails, directly or indirectly, have:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and 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; and
- c. engaged in acts, practices or courses of business which would and did operate as a fraud or deceit upon the purchasers and sellers of such securities.

36. Defendants intentionally or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

37. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate 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

THEREFORE, the Commission requests that the Court:

I.

Find that Defendants committed the violations charged and alleged herein.

II.

Enter a temporary restraining order, and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of the foregoing who receive actual notice of such 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 Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act (15 U.S.C. § 77q(a)(1)-(3)), Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. 240.10b-5).

III.

Enter a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants and their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of such orders, by personal service or otherwise, and each of them from, directly or indirectly soliciting, accepting or receiving any funds from individuals or entities for the purpose of investment.

IV.

Enter a temporary restraining order and orders of preliminary and permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants and their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of such orders, by personal service or otherwise, and each of them from, directly or indirectly:

A. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property belonging to, or directly or indirectly, in the possession, custody or control of Defendants or in which these Defendants have a beneficial interest, wherever located;

B. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts or other property obtained or maintained with investor funds, or into which investor funds have been deposited; and

C. destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations, belonging to, or directly or indirectly in the possession, custody or control of defendants, in whatever form, including electronic, and wherever located.

V.

Enter an order requiring Defendants to:

A. provide the Commission, within seven days of the issuance of this Order, with an accounting of all of the funds received, directly or indirectly, from individuals or entities who gave Defendants money for investment, which accounting shall include, without limitation, a schedule indicating: (1) the date of each investment, name of each investor, amount of each

investment and any account into which such investments were deposited; (2) the uses to which such funds were put, including but not limited to the nature and purpose of the use of the funds, the date and amount of the disbursement and the name of the individual or entity involved in the transaction; (3) amounts of any remaining funds and their location; and (4) a separate schedule and accounting of the assets and liabilities of Defendants and their location as of December 23, 2004;

B. produce to the Commission, within seven days of the issuance of the temporary restraining order, all books, records and other documents supporting or underlying the accounting provided to the Commission pursuant to paragraph V.A. above; and

C. produce to the Commission, within seven days of the issuance of the temporary restraining order, all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of Defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession; provided, however, that nothing in the order shall be construed to require defendants to abandon any constitutional or other legal privilege which they may have available to them.

VI.

Enter an order requiring Defendants to disgorge the ill-gotten gains that they received as a result of their wrongful conduct, including prejudgment interest.

VII.

Enter an order imposing upon Defendants appropriate civil penalties pursuant to Section 20(d) of the Securities Act (15 U.S.C. § 77t(d)) and Section 20(d)(3) of the Exchange Act (15 U.S.C. § 78u(d)(3)).


VIII.

Retain jurisdiction of this action in accordance with the principals 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.

IX.

Grant orders for such further relief as the Court deems appropriate.

Respectfully submitted,



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Dated: December 23, 2004

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

BOCKETED
DEC 27 2004

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): **Securities and Exchange Commission**

Defendant(s): **Weaver, Brad A., Beta Asset Management, Inc.**

County of Residence:

County of Residence: **Cook**

Plaintiff's Atty: **Jerrold H. Kohn
SEC
175 W. Jackson Blvd., St. 900,
Chicago, IL 60604
312-353-7217**

Defendant's Atty:

04C 8279

II. Basis of Jurisdiction: **1. U.S. Gov't Plaintiff**

JUDGE PALLMEYER

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: -N/A
Defendant: -N/A

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **850 Securities / Commodities / Exchange**

VI. Cause of Action: **Action by Commission to halt fraudulent offering of securities in violation of 15 U.S.C. 77q(a) and 78j(b) and 17 C.F.R. 240.10b-5**

VII. Requested in Complaint

Class Action: **No**
Dollar Demand: **Unknown**
Jury Demand: **No**

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature: _____

Jerrold H. Kohn

Date: _____

12/23/04

FILED FOR DOCKETING
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CLERK
U.S. DISTRICT COURT

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. Note: You may need to adjust the font size

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

In the Matter of

Securities and Exchange Commission v. Brad A. Weaver
and Beta Asset Management, Inc.

DOCKETED
DEC 27 2004

Case Number: **04C-8279**
JUDGE PALLMEYER
MAGISTRATE JUDGE
GERALDINE SOAT BROWN

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
Plaintiff

(A)		(B)	
SIGNATURE <i>Jerrold H. Kohn</i>		SIGNATURE <i>Thomas J. Meier</i>	
NAME Jerrold H. Kohn		NAME Thomas J. Meier	
FIRM Securities and Exchange Commission		FIRM Securities and Exchange Commission	
STREET ADDRESS 175 W. Jackson Blvd., St. 900		STREET ADDRESS Same as (A)	
CITY/STATE/ZIP Chicago, IL 60604		CITY/STATE/ZIP	
TELEPHONE NUMBER 312-353-7217	FAX NUMBER 312-353-7398	TELEPHONE NUMBER 312-353-7426	FAX NUMBER 312-353-7398
E-MAIL ADDRESS kohnj@sec.gov		E-MAIL ADDRESS meiert@sec.gov	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6188085		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6225621	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE <i>Paul Montoya</i>		SIGNATURE	
NAME Paul A. Montoya		NAME	
FIRM Securities and Exchange Commission		FIRM	
STREET ADDRESS Same as (A)		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER 312-353-7429	FAX NUMBER 312-353-7398	TELEPHONE NUMBER	FAX NUMBER
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6229890		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

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