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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. PETR MURMYLYUK, Defendant.	Case No. 12-cv-2272-CCC **COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission"), 701 Market Street, Suite 2000, Philadelphia, Pennsylvania 19106, alleges as follows against Defendant Petr Murmylyuk ("Murmylyuk" or "Defendant"), who is currently incarcerated at Otis Bantum Correctional Center, 16-00 Hazen Street, East Elmhurst, NY 11370 and whose last known address prior to incarceration is 415 Albermarle Rd., Apt. 5D, Brooklyn, NY 11218:

SUMMARY

1. The Commission alleges that Defendant Murmylyuk engaged in an online account intrusion scheme wherein he stole money from an unsuspecting victim by seizing control of the victim's online brokerage account (the "Victim Account") and causing it to execute trades with an online brokerage account controlled by Murmylyuk and opened in the name of a fictitious individual, "Dmitry Tokar" (the "Tokar Account").

2. While in control of both accounts, Murmylyuk entered corresponding options trades in the two accounts—forcing the Victim Account to buy at high prices and sell at low prices, while the Tokar Account bought at low prices and sold at high prices. Thus, Murmylyuk misappropriated funds from the Victim Account by causing the unauthorized transfer of funds from that account to the Tokar Account.

3. To perpetuate his scheme, Murmylyuk selected relatively illiquid stocks (securities that were not trading at high volumes) that allowed him to match many transactions between the accounts.

4. During a few hours of trading on a single day, Murmylyuk caused the Victim Account to lose more than $140,000, and the Tokar Account to realize ill-gotten gains in excess of $30,000.

5. By knowingly or recklessly engaging in the conduct described in this Complaint, Murmylyuk violated and, unless restrained and enjoined, will continue to 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 [17 C.F.R. § 240.10b-5], thereunder.

6. The Commission asks this Court to order that: (1) Murmylyuk and his agents be enjoined from future violations of the federal securities laws alleged herein; (2) Murmylyuk disgorge the ill-gotten gains realized in the Tokar Account plus pre-judgment interest on that amount; (3) Murmylyuk pay a civil penalty; (4) the assets remaining in the Tokar Account be frozen by preliminary injunction pending the outcome of this case; and (5) the assets remaining in the Tokar Account be paid to the Commission to satisfy, in part, the judgment obtained by the Commission against Murmylyuk in this matter.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], to enjoin such acts, transactions, practices, and courses of business, obtain disgorgement and civil penalties, and for other appropriate relief.

8. This Court has 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].

9. Venue in this District is proper 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]. Certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the District of New Jersey.

DEFENDANT

10. Petr Murmylyuk, age 31, is a Russian citizen residing in Brooklyn, New York. Murmylyuk is currently incarcerated at Otis Bantum Correctional Center, 16-00 Hazen Street,

East Elmhurst, NY 11370. His last known address prior to incarceration is 415 Albermarle Rd., Apt. 5D, Brooklyn, NY 11218.

FACTS

11. On November 1, 2011, Murmylyuk perpetrated his fraud in connection with the stock of two companies whose shares are listed on The NASDAQ Stock Market—Arena Pharmaceuticals, Inc. ("ARNA", its ticker symbol) and Biodel, Inc. ("BIOD", its ticker symbol).

12. Murmylyuk carried out his scheme using two on-line brokerage accounts. First, Murmylyuk controlled an account that had been established in August 2011 at TradeStation Securities, an online broker-dealer. The account was falsely registered under the name Dmitry Tokar. According to the account registration information, Dmitry Tokar was born on March 16, 1982 and resided in Texas.

13. The social security number used to register the account was part of a group issued between 1956 and 1959 and belongs to a 71 year old man living in New York, who is not named Dmitry Tokar.

14. Second, on November 1, 2011, Murmylyuk intruded upon and took control over the Victim Account, which was held at Firm A, an online broker-dealer, and owned by Victim 1, a resident of Delaware. Victim 1 did not conduct or authorize any of the trading done in the Victim Account on November 1, 2011 involving the stocks of ARNA or BIOD, or any options in those stocks.

15. Murmylyuk intruded upon the Victim Account at 11:14 a.m. and controlled the account for at least four hours.

16. While in control of both accounts, Murmylyuk entered corresponding options trades in the two accounts in an effort to misappropriate funds from the Victim Account. Murmylyuk forced the Victim Account to buy at high prices and sell at low prices, while the Tokar Account bought at low prices and sold at high prices.

Background Regarding Options Trading

17. In the context of options, the phrases "sell to open" and "buy to open" refer to the creation of a new position in that particular option. Buy to open refers to the creation of a new long position. Sell to open refers to the creation of a new short position. Conversely, "sell to close" and "buy to close" refer to the entering or execution of an order that will eliminate all or part of an existing options position. Buy to close would reduce an open short position and sell to close would reduce an open long position. By "closing" a position, the market participant eliminates the risk of an open position and locks in and realizes any gain or loss. Each option contract relates to the option to buy or sell 100 shares of the underlying stock.

The ARNA Trades

18. At 11:59 a.m. on November 1, 2011, Murmylyuk caused the Tokar Account to purchase 23,000 shares of ARNA. Five minutes later, in the same account, he entered an order to sell to open 230 contracts of ARNA April 2012 Call Options with a strike price of $1.00 ("April 2012 $1.00 Calls") and a limit price of $0.90. Less than two minutes later, Murmylyuk entered a corresponding order in the Victim Account, offering to buy to open the same number of contracts of the April 2012 $1.00 Calls at the same price.

19. However, because other market participants were willing to sell the contracts for less than the \$0.90 limit set in the Tokar Account's order to sell, the order to buy placed in the Victim Account was executed against other market participants at a price below \$0.90 and the order to sell placed in the Tokar Account went unfilled.

20. A few minutes later, Murmylyuk tried again. In the Tokar Account he entered an order to sell to open 230 contracts of ARNA January 2014 Call Options with a strike price of \$2.50 ("ARNA 2014 \$2.50 Calls") and a limit price of \$0.58. He placed a corresponding order in the Victim Account to buy to open 221 contracts of ARNA January 2014 \$2.50 Call Options with a limit price of \$0.58. The order to buy placed by the Victim Account was filled in its entirety—64 contracts were executed against the Tokar Account, while the remaining contracts were executed against other market participants. Other than the 64 contracts executed against the Victim Account, the remaining order to sell placed by the Tokar Account went unfilled.

21. Murmylyuk then probed the market by entering orders involving fewer contracts and different limit prices in an effort to find a price that might enable him to have the order placed in the Tokar Account executed opposite the order placed in the Victim Account.

22. Thereafter, Murmylyuk tried again. In the Tokar Account, he entered an order to sell to open 165 contracts of ARNA 2014 \$2.50 Call Options with a limit price of \$0.90. He entered a corresponding order in the Victim Account to buy to open 250 contracts at the same limit price. However, as with his first attempt, the order placed in the Victim Account was executed in its entirety against other market participants at a price below the \$0.90 offered by the Tokar Account, and the order placed in the Tokar Account went unfilled.

23. At this point, Murmylyuk closed out the Tokar Account's position of 64 option contracts by paying market prices and sold the ARNA stock held in the Tokar Account.

The BIOD Trades

24. Minutes after closing out the ARNA position in the Tokar Account, Murmylyuk restarted the process using a different security. He caused the Tokar Account to purchase 32,000 shares of BIOD. After that order was executed, Murmylyuk caused the Tokar Account to sell to open 320 contracts of BIOD January 2012 Call Options with a strike price of $0.50 ("BIOD January 2012 $0.50 Calls") and a limit price of $0.50. Two minutes later, Murmylyuk caused the Victim Account to enter a corresponding order to buy to open 320 contracts of the BIOD January 2012 $0.50 Calls with a limit price of $0.50. Upon entry of that order, 82 contracts were executed between the Victim Account and the Tokar Account. The remaining contracts ordered by the Victim Account were filled against another market participant. The remaining portion of the Tokar Account order to sell went unfilled.

25. Minutes later, Murmylyuk cancelled the unfilled portion of the order placed in the Tokar Account. He then placed a new order in the Tokar Account to buy to close 82 contracts of the BIOD January 2012 $0.50 Calls with a limit price of $0.15. Two minutes later, he caused the Victim Account to enter an order to sell to close 320 contracts of the BIOD January 2012 $0.50 Calls, also with a limit price of $0.15. The order in the Victim Account was filled against other market participants at a higher price than that offered by the Tokar Account; and the order in the Tokar Account went unfilled.

26. Murmylyuk then cancelled that buy to close order and placed a new buy to close order for 82 contracts of the BIOD January 2012 $0.50 Calls with a limit price of $0.35 in the Tokar Account. Because $0.35 was within the market range at the time, the order was executed

in the open market. Murmylyuk realized approximately $1,230 in ill-gotten gains from the trades of these 82 contracts.

27. In addition, Murmylyuk entered an order in the Tokar Account to sell to open 235 contracts of BIOD January 2013 Call Options with a strike price of $2.00 ("BIOD January 2013 $2.00 Calls") and a limit price of $0.60. Again, within minutes, Murmylyuk caused the Victim Account to enter a corresponding order to buy to open 395 contracts of the BIOD January 2013 $2.00 Calls, also with a limit price of $0.60. Upon entry of that order, 173 contracts were executed between the Tokar Account and the Victim Account. (The remaining buys for the Victim Account were executed against other market participants.) Murmylyuk then entered an order in the Tokar Account to buy to close 173 contracts with a limit price of $0.15. He entered a corresponding order to sell to close 220 contracts at the same limit price in the Victim Account. The order of the Victim Account was executed against other market participants and the order to buy in the Tokar Account went unfilled.

28. Murmylyuk tried again with a higher limit price, entering an order to buy to close 173 contracts of BIOD January 2013 $2.00 Calls with a limit price of $0.20 in the Tokar Account, and a corresponding order in the Victim Account to sell to close 173 contracts at $0.20. These orders were executed opposite one another. Murmylyuk realized approximately $6,920 in ill-gotten gains from the trades of these 173 contracts.

29. Less than an hour later, Murmylyuk repeated the process. This time Murmylyuk caused the Tokar Account to enter an order to sell to open 320 contracts of the BIOD January 2013 Call Options with a strike price of $5.00 ("BIOD January 2013 $5.00 Calls") and a limit price of $0.50. Within minutes, he caused the Victim Account to enter a buy to open order for 1,000 contracts at the same limit price. The orders were executed opposite one another, with the

remainder of the Victim Account's order executed opposite other market participants. Then, Murmylyuk entered an order in the Tokar Account to buy to close 320 of the same contracts with a limit price of $0.10. And he caused the Victim Account to enter an order to sell to close 400 of those contracts with a limit price of $0.10. Again, the trades were executed opposite one another and the remainder of the order placed by Murmylyuk in the Victim Account was executed against other market participants. Murmylyuk realized approximately $12,800 in ill-gotten gains from the trades of these 320 contracts.

30. Shortly thereafter, Murmylyuk repeated the process again. This time he caused the Tokar Account to enter an order to sell to open 320 contracts of the BIOD December 2011 Call Options with a strike price of $0.50 ("BIOD December 2011 $0.50 Calls") and a limit price of $0.65. He caused the Victim Account to enter a corresponding buy to open order for 800 contracts of the same options with a limit price of $0.70. The orders were executed against one another. The remainder of the order placed by Murmylyuk in the Victim's Account was filled opposite other market participants. Murmylyuk then caused the Tokar Account to enter an order to buy to close 320 of the same options with a limit price of $0.25 and caused the Victim Account to enter an order to sell to close 600 of the same options at that same limit price. As before, these orders were executed opposite one another and the remainder of the order in the Victim Account was filled against other market participants. Murmylyuk realized approximately $12,800 in ill-gotten gains from the trades of these 320 contracts.

Murmylyuk's Scheme Ends Because He Drained The Victim Account Of Available Capital

31. About three hours after he commenced draining the Victim Account, Murmylyuk tried to continue his fraud in a slightly different manner. He sold the BIOD stock he held in the Tokar Account.

32. Murmylyuk then caused the Victim Account to purchase 10,000 shares of BIOD stock.

33. Minutes later, Murmylyuk entered an order to buy to open 1,000 contracts of BIOD December 2011 Call Options with a strike price of $1.50 ("BIOD December 2011 $1.50 Calls") and a limit price of $0.05.

34. Three minutes later, Murmylyuk caused the Victim Account to purchase another 80,000 shares of BIOD stock. Murmylyuk then caused the Victim Account to sell to open 900 contracts of BIOD December 2011 $1.50 Calls with a limit price of $0.05, which corresponds with the buy to open order he had placed in the Tokar Account.

35. The order placed in the Victim Account was filled opposite the Tokar Account. Of the remaining 100 contracts ordered by the Tokar Account, 40 of them were filled opposite another market participant and the remaining 60 were not filled.

36. Murmylyuk then entered an order to sell to close 940 contracts of BIOD December 2011 $1.50 Calls with a limit price of $0.05. He also entered an order in the Victim Account to buy to close 500 contracts of the same options with a limit price of $0.30.

37. The order placed in the Victim Account was filled against other market participants. The order placed in the Tokar Account was partially filled (909 of the 940 contracts) opposite other market participants.

38. Ultimately, Murmylyuk had depleted the Victim Account to such an extent that he could not proceed further with his scheme. Murmylyuk logged off the Tokar Account and exited the Victim Account. Murmylyuk fully closed the open position of 31 contracts of BIOD December 2011 $1.50 Calls in the Tokar Account the next day by selling the remaining 31 contracts at $0.05 to other market participants.

<u>Murmylyuk's Fraudulent Scheme Defrauded Victim 1 and the Market</u>

39. The pattern and timing of the trades in the two accounts demonstrate that Murmylyuk controlled the two accounts during the relevant period of time and depleted the Victim Account through his fraudulent scheme for his own benefit.

40. Through a series of fraudulent securities transactions, Murmylyuk caused the unauthorized transfer of funds from the Victim Account to the Tokar Account.

41. As part of his scheme, Murmylyuk bought shares of an underlying stock where the market for options in the stock was relatively illiquid. Then Murmylyuk wrote options on the stock. He caused the Tokar Account to take one position on the options (either buying or selling).

42. After seizing control of the Victim Account, and without authorization of Victim 1 (the owner of the Victim Account), Murmylyuk caused the Victim Account to place a corresponding order opposite the order he had place in the Tokar Account.

43. To effectuate the transfer of funds, when the Tokar Account sold, it sold high and the Victim Account bought high. When the Tokar Account bought, it bought low and the Victim Account sold low. To the extent that the corresponding trades were executed against one another, the Tokar Account profited at the expense of the Victim Account.

44. By repeating the process over and over and over again, Murmylyuk caused the Victim Account to be depleted by more than $140,000.

45. At the same time, through his scheme, Murmylyuk realized in excess of $30,000 in ill-gotten gains in the Tokar Account.

46. In addition to defrauding Victim 1, Murmylyuk also defrauded other market participants by engaging in fraudulent trades that appeared to unknowing market participants to be legitimate offers to buy and sell securities. In reality, they were unauthorized and fraudulent acts that violated the federal securities laws.

CLAIMS FOR RELIEF

FIRST CLAIM

Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act

47. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 46, inclusive, as if the same were fully set forth herein.

48. As set forth more fully above, on November 1, 2011, as a result of the conduct alleged herein, Murmylyuk, knowingly or recklessly, in connection with the offer or sale of securities, directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

a. Employed devices, schemes or artifices to defraud; and/or

b. Engaged in acts, transactions, practices, or course of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

49. By engaging in the foregoing conduct, Murmylyuk violated, and unless enjoined will continue to violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) Thereunder

50. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 49, inclusive, as if they were fully set forth herein.

51. As set forth more fully above, on November 1, 2011, by engaging in the conduct described above, Murmylyuk, directly or indirectly, in connection with the purchase or sale of securities, by use of the 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; and/or

b. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

52. By engaging in the foregoing conduct Murmylyuk violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rules 10b-5(a) and 10b-5(c) [17 C.F.R. §§ 240.10b-5(a), (c)], thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendant Murmylyuk and his 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, from violating 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.

II.

Ordering Defendant Murmylyuk to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

III.

Ordering Defendant Murmylyuk to pay 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)], in an amount to be determined by the Court.

IV.

Ordering the freezing of the assets in the "Tokar Account" and directing that TradeStation comply with the Court's Order.

V.

Ordering that the assets in the Tokar Account be paid to the Commission to satisfy (in part) any judgment obtained against Defendant Murmylyuk in this case.

VI.

Granting such other and further relief as the Court may deem just, equitable, and proper.

Respectfully submitted,

By: ______________________________
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Dated: April 17, 2012

Certification

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is the subject of a criminal action pending in this court, No: 2:12-mj-8059-MCA-1. The United States is the plaintiff in that matter, and Petr Murmylyuk is the lone defendant in that case.

By: ____________________

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