

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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| <b>SECURITIES AND EXCHANGE<br/>COMMISSION,</b> | : |                         |
|  | : |                         |
| <b>Plaintiff,</b>                              | : |                         |
|  | : |                         |
| <b>v.</b>                                      | : | <b>CIVIL ACTION NO.</b> |
|  | : |                         |
|  | : |                         |
| <b>JAMES C. COPE, ESQ.,</b>                    | : |                         |
|  | : |                         |
| <b>Defendant.</b>                              | : |                         |
|  | : |                         |

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**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff, Securities and Exchange Commission (the “Commission”), files this Complaint and alleges as follows:

**OVERVIEW**

1. This matter involves insider trading by James C. Cope, Esq. (“Cope”), a Tennessee attorney and former member of the Board of Directors (“Board”) and Executive Committee of the Board (“Executive Committee”) of Pinnacle Financial Partners, Inc. (“PNFP”), a Nashville, Tennessee-based bank holding company.

2. Between January 5, 2016 and January 11, 2016, Cope purchased a total of 10,179 shares of the common stock of Avenue Financial Holdings, Inc. (“AVNU”), another Nashville, Tennessee-based bank holding company, while in

possession of the material, non-public information that PNFP and ANNU were engaged in confidential merger discussions with a goal to complete a merger in the Third Quarter of 2016.

3. Cope initiated his purchases of AVNU shares shortly after learning about the merger negotiations – including that PNFP had made an informal offer to acquire AVNU at a premium over its current share price – during a January 5, 2016 monthly meeting of PNFP’s Executive Committee. Trading records indicate that Cope placed his first order to purchase AVNU shares *while that meeting was still in progress*. Thereafter, he made seven additional purchases of AVNU shares, for a total purchase of 6,179 shares that day.

4. Six days later, on January 11, 2016, Cope purchased another 4,000 AVNU shares. AVNU and PNFP jointly announced the signing of the merger agreement on Thursday, January 28, 2016, after the markets closed.

5. By the end of the next trading day, Friday, January 29, 2016, the closing share price of AVNU stock had increased by \$5.53 to \$19.24 per share, or over 40 %, giving Cope unrealized ill-gotten gains of not less than \$56,302.

### **VIOLATIONS**

6. Cope has engaged in and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will

constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin Cope from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

8. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Cope, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this Complaint, and made use of the mails and the means or instrumentalities of interstate commerce to effect transactions, or to induce or to attempt to induce the insider trading alleged in this Complaint.

10. Venue is proper in this Court as certain of the transactions, acts,

practices, and courses of business constituting violations of the Exchange Act occurred in the Middle District of Tennessee. In addition, Cope resides in Murfreesboro, Tennessee, which is located in the Middle District of Tennessee.

11. Cope, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this Complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

### **THE DEFENDANT AND RELATED PARTIES**

12. Cope, 67, resides in Murfreesboro, Tennessee. He served on PNFP's Board from March 2006 until his resignation in April 2016, as a result of the conduct alleged in this Complaint. Prior to joining PNFP, Cope served as a member of the Board of Directors of Cavalry Bancorp, Inc. ("CAVB"), a former public issuer and bank holding company located in Murfreesboro, Tennessee. Cope is an attorney and partner in the Murfreesboro, Tennessee law firm of Cope, Hudson, Reed & McCreary, PLLC. The firm's website describes his practice as civil litigation, corporate and governmental law.

13. Avenue Financial Holdings, Inc., ("AVNU") was a bank holding company headquartered in Nashville, Tennessee, and operating primarily through its subsidiary, Avenue Bank. Prior to its acquisition by PNFP, which closed on

July 1, 2016, AVNU's common stock was traded on NASDAQ.

14. Pinnacle Financial Partners, Inc. is a bank holding company headquartered in Nashville, Tennessee. PNFP's shares are traded on NASDAQ.

### **BACKGROUND**

15. In 2006, PNFP acquired Cavalry Bancorp, Inc. ("CAVB"), a former public issuer and bank holding company located in Murfreesboro, Tennessee. As part of the acquisition, two members of CAVB's Board of Directors joined the PNFP Board. One of the two was Cope, who remained a Director until April 2016. In addition to being a Director, in 2015 and 2016, Cope was the Chair of the Human Resources Subcommittee of PNFP's Board.

16. Under PNFP's Board structure, all Chairs of Board subcommittees, such as Cope, served on PNFP's Executive Committee, which had seven members. During the relevant period, PNFP's Board met quarterly, on the third Tuesday of the first month of the quarter. PNFP's Executive Committee met more frequently, on the first Tuesday of each month.

17. At all relevant times, PNFP had a code of conduct, which included an insider trading policy. That policy was set forth in a "Statement of Policy on Prevention of Insider Trading" ("Insider Trading Statement"), copies of which were also transmitted annually to the Board members. In 2016, the Insider Trading

Statement was provided to the Board members, including Cope, by a January 1, 2016 interoffice memorandum. The Insider Trading Statement stated that:

It is our policy that if a *Director*, officer or any employee has material nonpublic information relating to Pinnacle, he or she may not buy or sell securities of Pinnacle or engage in any other action to take advantage of, or pass on to others, that information. . . . This policy also applies to material information relating to any other company obtained in the course of your serving as a *Director* or an employee. [Emphasis in original]

18. Board members, such as Cope, were required to sign certifications yearly, stating that the Director “ha[d] read, underst[ood], and w[ould] comply” with the insider trading policy. In January 2015 and again in January 2016, Cope signed such certifications as part of completing his annual Director and Officer questionnaires for PNFP. In both years, the certifications contained identical language, namely:

I acknowledge that I have reviewed the [PNFP] Company Policy regarding Special Trading Procedures (the Trading Policy) and the Statement of Company Policy on Prevention of Insider Trading (the Insider Trading Statement) and certify that I have read, understand, and will comply with the policies and procedures set forth in such documents.

19. On October 19, 2015 - roughly two and half months prior to Cope’s improper trading here - the PNFP Board members, including Cope, assembled for special training on PNFP’s insider trading policy. This training occurred in conjunction with a Board dinner at a local restaurant and included a power point

presentation by a partner of Bass Berry & Sims, PLC, PNFP's Nashville-based corporate counsel. Within the first two pages of the power point, "inside information" was defined and the duty of the PNFP's Board members was made clear. The power point said: "What is inside information? Material, nonpublic information you learn about [PNFP] or another public company while serving as a director, officer or employee of Pinnacle...What are my duties with respect to insider information? **Never buy or sell stock while in possession of inside information.**" [Emphasis in original]

### **MERGER WITH AVENUE**

20. Since its founding, PNFP has grown its business through, among other things, a series of acquisitions of local Tennessee banks. On September 14 and 15, 2015, PNFP held a Board retreat to which it invited the investment banking firm of Keefe, Bruyette & Woods ("KBW"), to make a presentation on possible future acquisitions PNFP should consider. Cope attended this Board retreat and was present for KBW's presentation. In the presentation, KBW identified and evaluated for PNFP's Board four potential acquisition targets for PNFP. Included among the targets was AVNU.

21. Among the targets presented, AVNU was particularly attractive to many of the PNFP Board members because it would be a completely "in-market"

acquisition. This meant that all of AVNU's branches were in geographic proximity with PNF's branches, which in turn meant that a merger would allow significant consolidation of branches and other operations and permit sizeable cost savings.

22. In November 2015, the investment banking firm of SunTrust Robinson Humphrey published a "Sector Update" ("Robinson Sector Update") which modeled various business combinations among local Tennessee banks, including a favorable modeling of a combination of AVNU and PNF. Upon receiving the Robinson Sector Update, PNF's President and CEO, Terry Turner ("Turner") emailed a copy of it to AVNU's Chairman and CEO, Ron Samuels ("Samuels"), who was a long-time acquaintance, with a note suggesting that he and Samuels meet to discuss it. Turner and Samuels had occasionally discussed combining PNF and AVNU and, by sending the email, Turner hoped to renew those discussions.

23. PNF's Executive Committee meeting in December 2015 occurred on December 1<sup>st</sup> (the "December 1 meeting"). During the executive session of that meeting, which Cope attended, Turner briefed the Executive Committee members about the Robinson Sector Update and his emailing of it to Samuels. Turner further noted that he had not yet heard back from Samuels. Unknown to Turner at



the time, however, he had sent his email to Samuels to an incorrect email address.

Shortly after the December 1 meeting, this error was discovered, Turner successfully transmitted the Robinson Sector Update to Samuels, and the two began discussing a possible combination of AVNU and PNFP.

24. Those discussions intensified during December 2015. Specifically, in December, PNFP retained the investment banking firm of Sandler O'Neill to model the financial transaction and to advise PNFP. Based in part on this advice, Turner made an informal offer to Samuels to acquire all of AVNU's outstanding shares of common stock at \$19.00 per share, roughly a \$5.34 per share premium over AVNU's December 2015 average closing share price. Turner also sent to Samuels a draft nondisclosure agreement that included an exclusivity provision that required AVNU to negotiate exclusively with PNFP.

25. Although Samuels responded to Turner that AVNU would not yet sign such an agreement, Samuels did inform Turner that AVNU had formed a special committee of its Board of Directors to evaluate the offer and that the special committee had the authority to engage KBW as AVNU's financial advisor.

26. At the end of December 2015, Samuels communicated to Turner that AVNU's special committee was considering the transaction with PNFP but needed more time to consider it. Turner responded to Samuels that it was PNFP's

preference that the discussions progress promptly given that they were considering an “in-market” transaction, which would be more difficult to keep confidential.

### **THE JANUARY 5 EXECUTIVE COMMITTEE MEETING**

27. On January 5, 2016, PNFP held its January Executive Committee meeting. Since the merger negotiations between PNFP and AVNU had occurred following the December 1 meeting, Turner and PNFP’s CFO, Harold Carpenter (“Carpenter”) planned an extensive discussion of the possible merger with the Executive Committee members. In advance of the meeting, PNFP requested that Sandler O’Neill prepare a report detailing the financial aspects of the proposed merger. This report was made available through a secure web portal, called Director’s Desk, to the Executive Committee members, including Cope, on or about December 30, 2015.

28. The January 5 meeting, including the time allotted for the executive session, began at approximately 7:30 a.m. CT and last about 2 hours, ending at approximately 9:30 a.m. CT. Cope attended this meeting.

29. Using the Sandler O’Neill report, Turner and Carpenter briefed the Executive Committee members on the details and status of the merger negotiations. Among other things, they told the Executive Committee members, including Cope, about PNFP’s informal offer to AVNU to acquire its outstanding shares at

\$19.00 a share, which was a premium over AVNU's then average closing share price and AVNU's response of forming a special committee of its Board of Directors to consider the offer. They also discussed with the Executive Committee members PNFP's transmittal of a draft non-disclosure agreement with an exclusivity provision to AVNU, and AVNU's response that it needed more time to evaluate the offer.

30. Additionally, Turner and Carpenter emphasized the particular need for extra care to keep "in-market" acquisitions confidential. Although the merger negotiations were discussed during the executive session portion of the Executive Committee meeting, the discussion lasted at least a full hour of the two hour meeting.

31. Moreover, several of the Executive Committee members believed that, given the status of the negotiations, it was likely the merger would occur. Additionally, many of them believed that the negotiations were sufficiently advanced to be sufficiently material and precluded them from trading in AVNU shares.

### **COPE'S AVNU PURCHASES**

32. Cope's trading records indicate that he initiated his purchases of AVNU shares at 9:03 a.m. on January 5, 2016 - *during* the Executive Committee

meeting. He initiated these purchases online in his TD Ameritrade brokerage account. Specifically, starting at 9:03 a.m. CT, Cope placed the following orders:

|                |   |
|----------------|---|
| 9:03:58<br>am  | James Cope enters a limit order to purchase <u>2,000</u> shares at limit price \$13.75                                  |
| 9:40:34<br>am  | Cope enters a market order to purchase <u>1,000</u> shares (Order filled at \$13.7965)                                  |
| 9:52:37<br>am  | Cope enters a market order to purchase <u>1,000</u> shares (Order filled at \$13.796)                                   |
| 10:03:4<br>am  | Cope cancels his limit order to purchase <u>2,000</u> shares at limit price \$13.75                                     |
| 10:05:30<br>am | Cope enters a limit order to purchase <u>1,000</u> shares at limit price \$13.90. The order is filled.                  |
| 10:10:15<br>am | Cope enters a limit order to purchase <u>1,000</u> shares at limit price \$13.90. The order is filled.                  |
| 11:25:37<br>am | Cope enters a limit order to purchase <u>1,000</u> shares at limit price \$13.80. The order is filled.                  |
| 11:27:21<br>am | Cope enters a limit order to purchase <u>1,000</u> shares at limit price \$13.65. The order is filled.                  |
| 1:54:10<br>pm  | Cope enters a limit order to purchase <u>1,000</u> shares at limit price \$13.50. Only <u>179</u> shares are purchased. |

33. In total, Cope acquired 6,179 AVNU shares on January 5.

34. On January, 11, 2016, Cope purchases an additional 4,000 AVNU shares as follows:

|               |   |
|---------------|---|
| 1:56:21<br>pm | Cope enters a limit order to purchase <u>2,000</u> shares at limit price \$13.55. This order is filled. |
| 2:05:55<br>pm | Cope enters a limit order to purchase <u>2,000</u> shares at limit price \$13.45                        |
| 2:11:58<br>pm | Cope cancels his limit order to purchase <u>2,000</u> shares at limit price \$13.45                     |
| 2:13:24<br>pm | Cope enters a limit order to purchase <u>2,000</u> shares at limit price \$13.55. This order is filled. |

35. Importantly, there were additional merger-related events that occurred on January 11, 2016. Specifically, on January 11, 2016, PNFP and AVNU

negotiated the final terms of the nondisclosure agreement, which was signed the same day. The nondisclosure agreement gave PNFPP a 30-day period in which to negotiate exclusively with AVNU, which began providing PNFPP with detailed financial information to complete the analysis of the potential merger of the two companies.

36. On January 28, 2016, after the markets closed, AVNU and PNFPP jointly announced the signing of a merger agreement. By January 29, 2016, the closing share price of AVNU stock had increased by \$5.53 to \$19.24 per share, or over a 40% increase from AVNU's prior day's closing share price. Through his trading, Cope obtained unrealized profits of not less than \$56,302.

### **COUNT I—FRAUD**

#### **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]**

37. Paragraphs 1 through 36 are hereby re-alleged and are incorporated herein by reference.

38. Cope, in connection with the insider trading activity and the offer and sale of the securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

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

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the issuers of such securities, all as more particularly described above.

39. Cope knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. By engaging in such conduct, Cope acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

40. By reason of the foregoing, Cope, directly and indirectly, has 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].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully prays for:

**I.**

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Cope committed the violations alleged herein and was unjustly enriched as described herein.

## **II.**

A permanent injunction enjoining Cope, his officers, agents, servants, employees, and attorneys, and those 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 violating, directly or indirectly, 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].

## **III.**

An order requiring Cope to disgorge his ill-gotten gains or unjust enrichment, with prejudgment interest thereon, to effect the remedial purposes of the federal securities laws.

## **IV.**

An order pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], imposing civil penalties against Cope.

## **V.**

An order pursuant to Section 21(d)(2) of the Exchange Act, imposing an officer and director bar against Cope.

**VI.**

A jury trial.

**VII.**

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: October 21, 2016.

Respectfully submitted,

/s/ Robert F. Schroeder  
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