

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

RAYMOND STARKER,

Defendant.

Civil Action No. 3:19-cv-13939

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“SEC” or the “Commission”) alleges the following:

SUMMARY

1. Defendant Raymond Starker (“Starker”) illegally traded on inside information by selling securities of Energy Focus, Inc. (“EFOI”) before EFOI publicly announced a secondary offering of its securities in September 2015 (the “Public Announcement”) for \$17 per share, a 22% discount to EFOI’s stock price.

2. At the time, Starker had been a longstanding investor in EFOI, both individually and through a partnership that held more than five percent of the outstanding stock of EFOI. Starker also had relationships of trust and confidence with a EFOI’s chairman and CEO (“Executive A”) and member of the EFOI board of directors (“Director A”), who was Starker’s partner in the entity that held more than five percent of EFOI stock. In addition, Starker had close relationships with individuals at an investment bank that was seeking to participate in the EFOI offering (“Investment Bank”).

3. In the months before the Public Announcement, Starker discussed and emailed about the planned offering with Director A, Executive A, and individuals associated with the Investment Bank. In the course of these communications, Starker learned material, nonpublic information regarding the planned offering of EFOI.

4. For example, on July 27, 2015, Starker participated in a meeting in which the Investment Bank discussed with EFOI representatives, including Executive A, the possibility of participating in EFOI's planned offering. Later that evening, Starker joined Executive A, Director A, and at least one other EFOI employee, for a dinner at which details of the planned offering were discussed, including the proposed pricing and timing of the offering.

5. Throughout August and into September, Starker continued to communicate with Executive A, Director A, and the Investment Bank about the planned offering.

6. Executive A and Director A shared information with Starker about the planned offering because they had a history of sharing confidential information with each other and each expected the information would be kept confidential as it had in the past. In addition, Starker had a formalized written obligation of confidentiality to Director A, pursuant to an agreement for an investment partnership between Starker and Director A.

7. From August 17, 2015 through September 9, 2015, Starker misappropriated material nonpublic information he received from Executive A and Director A about the planned offering, in breach of the duty he owed to each of them, and used the information to sell 9400 shares of EFOI stock.

8. In the hours between the market close on September 10, 2015 and the market open on September 11, 2015, EFOI issued two press releases announcing the secondary offering at a 22% discount to the trading price at the time. EFOI's stock price dropped from \$23 per

share to \$16.43 per share. By selling 9400 shares of EFOI ahead of the Public Announcement, Starker avoided losses of approximately \$46,342.

9. By misappropriating material, nonpublic information about EFOI's planned offering and trading ahead of the Public Announcement, Starker violated Section 17(a) of the Securities Act of 1933 (the "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 [17 C.F.R. § 240.10b-5] thereunder. Accordingly, the Commission seeks: (i) entry of permanent injunctions prohibiting Starker from future violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder; (ii) disgorgement of Starker's ill-gotten gains together with prejudgment interest; and (iii) imposition of a civil monetary penalty.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Section 20 of the Securities Act [15 U.S.C. §§ 77t(b)] and Sections 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u-1, 78aa].

11. Venue is proper in this district under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa] because Defendant Starker resides in this district.

DEFENDANT

12. **Raymond Starker**, age 80, resides in Englishtown, New Jersey. During the relevant time period, he was a close friend with Director A, as well as investment partner in an entity controlled by Director A, which held more than five percent of EFOI's outstanding stock as its sole investment. In addition, Starker had a friendship and regularly discussed EFOI

business with Executive A. Starker also had close relationships with individuals at the Investment Bank.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

13. **Energy Focus, Inc.**, is a Delaware corporation with its headquarters in Solon, Ohio. Energy Focus's business involves developing, designing, and manufacturing energy-efficient lighting systems. Energy Focus stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on NASDAQ under the ticker symbol "EFOI."

14. **Executive A**, age 50, resides in Englewood Cliffs, New Jersey. Executive A was the Chief Executive Officer and Chairman of the board of directors at EFOI from June 2013 to February 2017.

15. **Director A**, age 65, resides in New York, New York. Director A was a member of the board of directors at EFOI from July 2014 to June 2018. Director A was also the only other partner in an investment partnership with Starker, which held more than five percent of EFOI's outstanding stock as its sole investment.

16. **Investment Bank**, is a Delaware limited liability company with its headquarters in San Francisco, California. Investment Bank is a global financial services firm that is registered with the SEC as a broker-dealer. Starker had close relationships with individuals at the Investment Bank. Starker had an office and email address at the Investment Bank.

FACTUAL ALLEGATIONS

17. Starker is a longstanding investor of EFOI, both individually and through an investment partnership that holds more than five percent of the shares of EFOI. Starker also had relationships of trust and confidence with numerous individuals and entities associated with EFOI, including Director A, Executive A, and the Investment Bank.

I. Starker had a Relationship of Trust and Confidence with Director A

18. Starker has known Director A for over 30 years, since they first met in the early 1980s when they were both working in the textile industry. Since then, Starker and Director A have maintained a close friendship.

19. In January 2012, Starker and Director A participated in discussions with EFOI related to a private offering of EFOI stock. In the context of those discussions, Starker and Director A signed a confidentiality and non-disclosure agreement with EFOI in which they agreed not to disclose or use confidential information about EFOI.

20. In March 2012, Director A formed an investment partnership which purchased approximately 6,000,000 shares of EFOI, representing approximately 7.75% of EFOI's outstanding stock.

21. In August 2012, Starker joined the partnership formed by Director A, and agreed to abide by the terms of the operating agreement. That agreement explicitly imposed a duty on its partners to not use or disclose confidential information "learned or received from or through any other member or manager or the [partnership]."

22. Subsequently, Director A joined the board of directors of EFOI in July 2014. Starker and Director A executed a supplemental agreement, in which each acknowledged and agreed that Director A might obtain confidential information about EFOI that he would not be permitted to share with the partnership or its members or use for the benefit of the partnership.

23. Starker had a relationship of trust and confidence with Director A stemming from both the formal partnership agreements and their close personal relationship.

II. Starker had a Relationship of Trust and Confidence with Executive A

24. Starker first met Executive A in the second half of 2011. At that time, Executive A was part of an investor group evaluating an investment in EFOI, and Starker was identified as an early investor who could provide some additional information and perspective. From this time forward, Starker and Executive A communicated regularly about EFOI's business.

25. In approximately June 2013, Executive A joined EFOI as its Chairman and CEO. Through at least 2015, Executive A and Starker continued to communicate by phone, email, and in person at least monthly about EFOI and other business opportunities. Many of these communications also involved Director A. Both Executive A and Director A expected that Starker would maintain information about EFOI in confidence.

III. Starker Learned Material Nonpublic Information Concerning the EFOI Offering

26. In and around June 2015, EFOI began exploring the possibility of conducting a secondary offering of its securities, including the sale of securities offered directly by EFOI as well as the sales of securities owned by certain shareholders.

27. In early to mid-July 2015, Executive A began contacting existing large shareholders to inquire about their interest in participating as a seller in the proposed offering. Starker and Director A held a significant number of EFOI shares through their partnership and were among those contacted by Executive A about selling shares in the planned offering. Starker rejected the offer to participate as a selling shareholder in the offering.

28. On July 27, 2015, Starker attended a meeting in which the Investment Bank and EFOI, including Executive A, discussed the possibility of participating in EFOI's planned offering. Later that evening, Starker joined Executive A, Director A, and at least one other EFOI

employee, for a dinner at which details of the planned offering were discussed, including the contemplated size, pricing, and timing of the offering.

29. On July 28, 2015, Starker sent an email to an individual at the Investment Bank, describing both the meeting with the Investment Bank and the dinner with Executive A and Director A. In the email, Starker wrote: “the plan is capital raise Sept/Oct, 3 million shares at 10-12 dollars per share.”

30. Throughout August and September, Starker continued to communicate with Executive A and Director A about the planned offering, received updated information, and advocated for retention of the Investment Bank to assist with the offering.

IV. Starker Misappropriated Nonpublic Information and Sold EFOI Stock Ahead of the Public Announcement

31. Director A and Executive A shared information about the planned offering with Starker because they had a history of shared confidences and each expected Starker to maintain those confidences as he had in the past. Nevertheless, Starker misappropriated the confidential information about the offering, and used it to sell shares of EFOI

32. During the week of August 10 to 14, 2015, EFOI moved ahead with its preparations for the offering and met with several potential investment banks, including the Investment Bank. Starker communicated both with Director A and individuals at the Investment Bank throughout that week.

33. On Monday morning, August 17, 2015 at approximately 8:22 a.m., Starker called his broker and placed an order to sell shares of EFOI in his personal brokerage account. Over the next four days, Starker sold 4000 shares for a total of \$67,220.50.

34. By early September, EFOI was in the final stages to complete the secondary offering. On September 1, members of the EFOI board of directors, including Director A,

received copies of the final resolution to approve the offering. On September 2, an individual at the Investment Bank contacted Executive A by email to discuss the planned offering and the Investment Bank's potential role in it. Executive A responded on the morning of Thursday, September 3 indicating that the offering was moving forward. The individual at the Investment Bank forwarded this email to Starker at 8:05 a.m.

35. Later that same day, September 3, 2015, Starker placed another order to sell shares of EFOI, of which 5400 shares were sold in increments through September 9, 2015 for a total of \$138,939. The 9400 total shares sold by Starker constituted 9.6% of Starker's holdings as of July 27, 2015.

V. **EFOI Announced the Planned Offering, Its Stock Price Decreased, and Starker Avoided Losses**

36. On September 10, 2015, EFOI's stock price closed at \$23 per share.

37. In the hours between the market close on September 10, 2015 and the market open on September 11, 2015, EFOI issued two press releases announcing the secondary offering at \$17 per share, a 22% discount to the trading price at the time of the announcement. After the Public Announcement, EFOI's stock price fell and closed at \$16.43 per share on September 11, 2015.

38. By selling 9400 shares of EFOI ahead of the Public Announcement and based on material information of the impending secondary offering, Starker avoided losses of approximately \$46,342.

FIRST CLAIM FOR RELIEF
Insider Trading in Violation of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder

39. The Commission realleges and incorporates by reference the allegations in paragraphs 1 through 38, as if they were fully set forth herein.

40. By engaging in the conduct described above, Starker directly and indirectly, in connection with the purchase or sale of securities, and by use of the means or instrumentalities of interstate commerce, or the mails, or a the facilities of a national securities exchange, has, with scienter:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts or omitted to state materials facts necessary in order to make the statements made, in light of the circumstances they were made, not misleading; and,
- (c) 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.

41. Starker sold securities of EFOI, while in possession of material nonpublic information relating to the planned secondary offering, in breach of a duty of trust and confidence that he owed to Director A and Executive A.

42. By engaging in the foregoing misconduct, Starker 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].

SECOND CLAIM FOR RELIEF
Insider Trading in Violation of Section 17(a) of the Securities Act

43. The Commission realleges and incorporates by reference the allegations in paragraphs 1 through 42, as if they were fully set forth herein.

44. By engaging in the conduct described above, Starker, directly or indirectly, in the offer or sale of a security by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has, with scienter:

- (a) employed a device, scheme, or artifice to defraud;
- (b) obtained money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in a transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

45. By engaging in the foregoing misconduct, Starker has violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

Enter a Final Judgment:

- (a) finding that Starker violated the securities laws and rules promulgated thereunder as alleged herein;
- (b) permanently restraining and enjoining Starker and his agents, servants, employees and attorneys and all 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 committing future violations of each of the securities laws and rules promulgated thereunder;
- (c) ordering Starker to disgorge all ill-gotten gains, including prejudgment interest, resulting from the violations alleged herein;

- (d) ordering Starker to pay a civil money penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1], for his violations of the federal securities laws; and
- (e) awarding such other and further relief as this Court may deem just and appropriate.

Dated: June 18, 2019.

Respectfully submitted,

/s/Daniel J. Maher

Daniel J. Maher
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
(202) 551-4737
maherd@sec.gov

Of Counsel:
Devon Leppink Staren
starend@sec.gov
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549