

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

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SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	COMPLAINT
)	
BARTON S. ROSS,)	
)	
Defendant.)	
_____)	

Plaintiff Securities and Exchange Commission (the “Commission”) files this Complaint against Defendant Barton S. Ross (“Ross” or “Defendant”) and alleges as follows:

SUMMARY

1. Between February 1, 2018 and January 2020 (the “Relevant Period”), Ross engaged in a fraudulent scheme to manipulate the market for securities of publicly-traded companies by creating and disseminating false rumors designed to cause the price of the target company’s stock and options to rise temporarily.

2. Ross, a former day trader, drafted and edited the false rumors and shared them with other scheme participants, who also edited them. The scheme participants then disseminated the false rumors, timed to maximize impact, via instant messenger to numerous contacts at real-time financial news services, financial chat rooms, and certain other financial news purveyors, some of which, within minutes, if not seconds, further disseminated them through their news services and in chat rooms and message boards. This conduct resulted in the prices of the subject companies’ securities being artificially inflated for brief periods until they were corrected by the market.

3. During the Relevant Period, Ross traded around the dissemination of these false rumors at least 49 times, earning \$35,968 in unlawful profits.

4. By virtue of the conduct alleged herein, Ross violated, and unless restrained and enjoined may violate again, Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

5. The Commission brings this action pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1]. The Commission seeks a judgment (1) permanently enjoining Ross from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; and (2) ordering Ross to pay civil money 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 upon motion of the Commission. The Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 20 and 22 of the Securities Act [15 U.S.C. §§ 77t & 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

7. Venue lies in this District 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]. Certain of the acts, practices, transactions, and courses of business constituting the violations occurred within the Northern District of Georgia, and during the time of the events described herein, the Defendant resided and transacted business in this District.

8. While residing in the District, the Defendant sent and received messages containing false rumors to other scheme participants and executed trades designed to profit from the price manipulation caused by the scheme.

DEFENDANT

9. Ross, age 56, resides in Atlanta, Georgia. During the Relevant Period, Ross traded securities in his own securities brokerage account, while holding several different jobs that did not involve the trading of securities.

FACTS

I. Ross and the Other Scheme Participants Create and Disseminate False Rumors.

10. Ross has known two of the South-Florida based scheme participants, Trader A and Trader B, for decades, having previously worked with them at securities trading firms. Ross was introduced to another scheme participant, Trader C, in 2016, at which time the scheme participants began regularly discussing trading ideas via phone calls, instant messenger, and encrypted communication application. At a certain point, Trader C decided that they should make up believable rumors based on their knowledge of the markets around which they could trade.

11. During the period he was involved in the scheme, Ross regularly discussed companies considered to be good targets for a rumor with Trader A, Trader B, and Trader C, and was the primary drafter of the false rumors that Trader A, Trader B and Trader C helped advise Ross to draft about the targeted companies.

12. Based on those discussions, Ross composed rumors about corporate mergers or acquisitions, large investments by hedge funds or private equity firms, or other potential market-moving events.

13. These false rumors targeted companies with publicly-traded short-term call options and were designed to maximize the price impact. The rumors were false and misleading having been created by Ross and/or the other scheme participants.

14. As part of the fraudulent scheme, Ross would send his proposed rumors to Trader A and Trader B, who provided feedback about the substance and wording of each rumor. Once the three agreed on the final text, one of them would send the rumor to Trader C, who was based in northern Georgia.

15. Trader C transmitted the false rumor via instant messenger to his numerous contacts at real-time financial news services, subscription-based financial chat rooms, and other financial news purveyors with sizable followings. Within minutes, if not seconds, the false rumor began appearing as “chatter” – i.e., the subject of discussion – on several of the financial news services and in the chat rooms and message boards that had been contacted.

16. This process of rumor creation and dissemination of false rumors was repeated many times over the Relevant Period.

II. Ross Trades Profitably Around the False Rumors.

17. Before the false rumors were disseminated, Ross (as well as Traders A, B, and C, and Trader D, another scheme participant who hosted a daily subscription based real-time trading broadcast based in Northern New Jersey) purchased short-term call options that usually expired within a day or two.

18. Ross’s purchases typically occurred from between several hours to a few seconds before Trader C sent the rumor to his industry contacts. On rare occasions, Ross began purchasing securities the day before Trader C transmitted the false rumor.

19. Ross typically bought small quantities of options and often bought cheaper options with strike prices further from the prevailing price of the stock.

20. Ross avoided buying the most desirable stock options (e.g. the stock options that were expected to be the most responsive to an increase in the underlying stock price) before Trader C. Ross did this because he knew if he bought those particular options, Trader C may decide not to push that particular corresponding false rumor.

21. The spread of the false rumors through various news services and in financial chat rooms, as well as the scheme participants' own purchases, caused an uptick in trading volume and typically resulted in an increase in the subject companies' securities prices. Though the percentage increase in the company's stock price was usually modest (typically less than 2%), the percentage increase in the price of the company's short-term call options was significant (often exceeding 25%).

22. All of the scheme participants, including Ross, almost always began selling their positions within minutes, if not seconds, after Trader C pushed the false rumor out to his industry contacts. Given his small purchases, Ross typically sold out of his entire position within minutes of Trader C pushing the rumor.

23. Ross traded at least 49 times around the false rumors, earning \$35,968 in unlawful profits between February 1, 2018 and September 2018 and then again between October 2019 and January 14, 2020. An Appendix identifying the date and ticker symbol of the 49 instances, as well as the amount of profits Ross earned from his trading in each instance is attached hereto.

III. Examples of Ross's Participation in the Market Manipulation Fraud

A. March 2018 Disney Rumor

24. Ross drafted a rumor that The Walt Disney Company ("Disney," ticker symbol DIS), had hired an investment bank, Goldman Sachs, to spin off ESPN and their theme parks, which could lead to an eventual sale of the company for over \$155 per share. Between March 6

and March 7, 2018, Ross purchased 10 Disney call options with a strike price of \$107 and 40 Disney call options with a strike price of \$106.

25. Because the options expired on March 9, 2018 and were several dollars out of the money, they were very inexpensive, costing Ross between \$.08 and \$.14 each, for a total investment of \$530.

26. On March 7, 2018 at 11:32:47 am, while completing his Disney call option purchases, Ross sent an instant message to Trader A with a first draft of the proposed rumor.

27. After exchanging revised drafts of the rumor through the following morning (including reducing the potential break-up value of Disney from \$175 per share to \$155 per share), at 9:53 am on March 8, 2018, Ross sent Trader C the draft rumor.

28. At 9:57:32 am, Trader C, after slightly revising the rumor and correcting typographical errors, transmitted the rumor via instant messenger to his financial headline news services and chatroom contacts:

“DIS Chatter hearing hired GS [Goldman Sachs] to spin off their theme parks and ESPN. According to one analyst the break-up value could exceed \$155 per share and may lead to an eventual sale of the company, unconfirmed.”

29. The rumor spread quickly. Nine seconds after the instant message, a widely followed financial news blogger, forwarded the verbatim rumor to his followers, also via instant messenger. Approximately one minute later, at 9:58:50 am, a financial website posted in its newschat “DIS spinoff chatter,” and at 10:04 am, a real-time financial news service posted in its chat that “sources note DIS may be selling off its ESPN and Theme Park assets – unconfirmed.”

30. During a trading webcast that was broadcasted live on the Internet, Trader D pulled up Disney’s technical chart on his screen and informed his subscribers that he had taken a position. Within minutes, subscribers to the webcast began posting on the webcast’s online forum that other financial news outlets were reporting the rumor, such as “Hearing chatter

circulating that DIS could consider spinning off theme parks and ESPN assets,” citing another real-time financial news service.

31. Trading volume in Disney securities increased immediately, resulting in a modest increase in the price of Disney’s stock, which had opened that day at approximately \$104 per share, and a more dramatic impact in trading volume and in the price of the March 9 \$104 and March 9 \$105 call options in the minutes following the dissemination of the rumor.

32. At 10:02 am – four and a half minutes after Trader C pushed out the false rumor – Ross sold the Disney call options he had purchased the two prior days, making a \$350 (66%) profit on his \$530 investment. The four other traders, Traders A-D, also profitably traded around the dissemination of the Disney rumor, buying options and stock in the minutes before the rumor and selling shortly thereafter, earning approximately \$43,000 in profits.

B. December 2019 Herbalife Rumor

33. Ross drafted a rumor that another well-known public company, Altria Group, Inc. (“Altria”) had offered to acquire a nutrition industry company, Herbalife Nutrition (“Herbalife,” ticker symbol HLF), for around \$60 per share. The rumor was disseminated on December 9, 2019, on which date Herbalife stock opened the trading day at approximately \$45 per share.

34. At 10:30 am on December 9, 2019, Ross purchased 80 Herbalife call options with a strike price of \$46.50 and an expiration date of December 13, 2019 for a total price of \$1,520. Immediately after purchasing the options, at 10:31:06 am, Ross sent an instant message to Trader A and Trader B with the proposed Herbalife rumor: “News circulated that Altria has offered to acquire Herbalife for around \$60 a share.”

35. Over the next few minutes, Ross, Trader A and Trader B discussed Herbalife’s stock price. Ross advised Trader A that he was “going out on it now,” and that he was going to

give the rumor to Trader C. At 10:48:35 am, Trader B sent the Herbalife rumor to Trader C, telling him that “you get it first.”

36. At 10:50:10, Trader C pushed the rumor, which was unchanged from Ross’s proposed version, to his instant messenger contacts. Less than one minute later, Trader B sent the rumor to his instant messenger contacts, including a contact at a subscription-based financial chat room.

37. Trading volume in Herbalife stock and options spiked dramatically, resulting in a pronounced and immediate impact on the price of Herbalife’s call options.

38. Between 10:51 am (approximately 1 minute after Trader C pushed out the false rumor) and 10:56 am, Ross sold his Herbalife options, making a \$646 (42.5%) profit on his \$1,520 investment. Despite the rumor’s brief impact on the price of Herbalife securities, Trader C and Trader D also traded profitably around the Herbalife rumors, earning over \$4,700 in profits.

FIRST CLAIM FOR RELIEF

Violation of Section 17(a) of the Securities Act

39. The Commission realleges and incorporates by reference paragraphs 1 through 38, as though fully set forth herein.

40. By virtue of the foregoing, Ross, directly or indirectly, singly or in concert with others, in the offer or sale of any security, with scienter, used the means or instruments of transportation or communication in interstate commerce or of the mails to: (a) employ any device, scheme, or artifice to defraud; (b) obtain 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) engage in any transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

41. By virtue of the foregoing, Ross, directly or indirectly, violated and, unless restrained and enjoined, may again violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

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

42. The Commission realleges and incorporates by reference paragraphs 1 through 41, as though fully set forth herein.

43. By virtue of the foregoing, Ross, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange to: (1) employ devices, schemes, or artifices to defraud; (2) make untrue statements of a material fact or to omit 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 (3) engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

44. By virtue of the foregoing, Ross, directly or indirectly, violated and, unless restrained and enjoined, may again 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 requests that this Court enter a Judgment:

I.

Finding that Ross violated the provisions of the federal securities laws as alleged herein;

II.

Permanently restraining and enjoining Ross 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 from, directly or indirectly, engaging in conduct 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(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

III.

Ordering Ross to pay a civil monetary penalty 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)]. The Court shall determine the amounts of the civil penalty upon motion of the Commission; and

IV.

Granting such other and further relief as this Court may deem just and proper.

Dated: Atlanta, Georgia
December 18, 2020

/s/ Stephan J. Schlegelmilch
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APPENDIX

Ticker	Date	Ross's Profits
PCG	2/1/2018	\$ 3,610
TIF	2/14/2018	\$ 2,282
TMUS	2/15/2018	\$ 150
CREE	2/20/2018	\$ 1,720
LLY	2/22/2018	\$ (140)
FSLR	3/1/2018	\$ (240)
ON	3/6/2018	\$ 210
DIS	3/8/2018	\$ 350
WMB	4/10/2018	\$ 110
LNG	4/11/2018	\$ 1,821
HOG	4/12/2018	\$ 770
LUV	4/12/2018	\$ 540
HAS	4/13/2018	\$ 1,250
BEN	4/18/2018	\$ 990
FDX	4/18/2018	\$ 810
EA	4/19/2018	\$ 1,625
WDC	4/20/2018	\$ 830
W	4/20/2018	\$ 830
DISH	4/24/2018	\$ (767)
DKS	4/25/2018	\$ (600)
TSLA	4/27/2018	\$ (1,420)
CHKP	5/2/2018	\$ (760)
CELG	5/9/2018	\$ 330
CL	5/30/2018	\$ 120
AAL	5/31/2018	\$ 1,090
WYNN	6/21/2018	\$ 235
MO	7/11/2018	\$ 560
CELG	7/20/2018	\$ 660
PFE	7/26/2018	\$ 670
YELP	7/26/2018	\$ 228
CAH	7/31/2018	\$ 870
IBM	8/3/2018	\$ 1,860

Ticker	Date	Ross's Profits
OSTK	8/3/2018	\$ 630
GM	8/9/2018	\$ 60
IBM	8/15/2018	\$ (79)
DE	8/22/2018	\$ (390)
HLF	9/13/2018	\$ 145
IP	9/26/2018	\$ 260
WDC	9/27/2018	\$ (120)
GILD	10/10/2019	\$ 2,730
IP	10/16/2019	\$ (13)
ULTA	10/17/2019	\$ (70)
UPS	10/25/2019	\$ (85)
HLF	12/9/2019	\$ 646
HOG	12/10/2019	\$ 2,665
CREE	12/18/2019	\$ 1,779
NTAP	12/19/2019	\$ 509
WYNN	1/10/2020	\$ 3,282
COF	1/14/2020	\$ 3,425

49 Instances	\$ 35,968
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