

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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SECURITIES AND EXCHANGE)
COMMISSION,)
)
	Plaintiff,) Civil Action No. 09 cv
)
v.)
)
RANDY M. CHO,)
)
	Defendant.)
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COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC"), alleges as follows:

NATURE OF THE ACTION

1. The SEC brings this securities law enforcement action to halt an ongoing fraudulent investment scheme run by Randy M. Cho ("Cho") from at least 2001 to the present. In the scheme, Cho offered and sold securities to investors in fraudulent transactions that violate federal securities law. Cho told investors that they were investing in the shares of specific well-known companies in anticipation of expected initial public offerings ("IPOs") of those companies, which included Centerpoint ("Centerpoint"), AOL/Time Warner, Inc. ("AOL/Time Warner"), Google, Inc. ("Google"), and Facebook, Inc. ("Facebook"). Cho also told investors that they would profit by selling their shares immediately after the expected IPOs. Most recently, in approximately April 2009, Cho told certain investors that they were investing shares

of Rosetta Stone, Inc. (“Rosetta Stone”) that were held at Goldman, Sachs & Co., Inc. (“Goldman Sachs”).

2. After each initial investment, Cho represented to investors that the IPO of the respective company would not occur, and offered to roll the investors’ funds into investments into shares of a second company, and in some instances, a third company. Using this scheme, Cho has raised at least \$3.7 million from at least 45 investors in at least four states. Some of these investors reside in the Northern District of Illinois.

3. In connection with his offer and sale of the fraudulent securities, Cho made numerous materially false and misleading statements about himself and about the investment. Specifically, Cho told investors:

- a. That he had a special relationship with Goldman Sachs, variously telling investors he was previously employed at Goldman Sachs, was considered a preferred client of Goldman Sachs, and/or had an account at Goldman Sachs;
- b. That Cho, on behalf of investors, was pooling investor funds to purchase shares in Centerpoint, AOL/Time Warner, Google, Facebook, and/or Rosetta Stone;
- c. That he was using investor funds to pay a purported U.S. tax liability on the transfer of certain shares, including Google and Rosetta Stone.

4. Cho deposited, and directed individual investors to deposit, investor funds in his personal bank accounts at Bank of America, N.A. (“BoA”).

5. From those accounts, Cho diverted and misappropriated the money for himself and his family, his personal trading, and operated a Ponzi scheme, using new investor funds to pay back existing investors.

6. By virtue of his conduct as alleged herein, Cho has engaged in transactions, acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), e(c), and q(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]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(l) and 80b-6(2)]; and unless permanently enjoined, Cho is likely to engage in future violations of these provisions.

7. The Commission, in the interest of protecting the public from further fraudulent activity and to provide relief to investors injured by Cho's fraudulent scheme, brings this civil enforcement action for a judgment: (a) permanently enjoining Cho from future violations of the antifraud provisions of the federal securities laws; (b) requiring Cho to disgorge his ill-gotten gains, plus prejudgment interest thereon; (c) imposing an appropriate civil penalty against Cho, (d) appointing a receiver to marshal Cho's assets and return funds to injured investors; and (e) such other relief as the Court deems appropriate.

8. In light of the continuing and serious risk of harm to current and prospective investors, including the possible dissipation of remaining investor assets and the risk that Cho may be soliciting further investments, the SEC is seeking immediate, emergency relief at the outset of this lawsuit, including the an entry of a temporary restraining order, the imposition of an asset freeze, and other ancillary relief.

JURISDICTION

9. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and

enjoin permanently the Defendant from engaging in the acts, practices, transactions and courses of business alleged herein, and for such other equitable relief a may be appropriate or necessary for the benefit of investors.

10. The Commission also seeks a final judgment ordering the Defendant to disgorge his ill-gotten gains and pay prejudgment interest thereon, and ordering the Defendant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

11. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)], Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. The Defendant, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices and courses of business occurred in the Northern District of Illinois, where certain investors reside and the Defendant made representations during the relevant period.

12. The Defendant has, directly and indirectly, made, and is making, use of the mails, and of the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

13. There is a reasonable likelihood that the Defendant will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint, and transactions, acts, practices and courses of business of similar purport and object.

DEFENDANT

14. **Randy M. Cho**, age 38, lives in Newton, Massachusetts. Cho has never held any professional licenses in the securities industry and has never been employed in the securities industry.

THE FRAUDULENT SCHEME

15. Beginning in at least 2001, Cho began offering and selling investments in the shares of various companies to investors. Cho solicited investors individually, and offered to pool investor funds to purchase shares for investors.

16. In at least 2001, Cho began offering and selling investments in the shares of Centerpoint to investors. Later in 2001, Cho told investors that Cho's friends at Goldman Sachs had additional Centerpoint shares available to purchase at \$12 per share and that the IPO price of the shares was going to be \$50.00 per share.

17. In late August or early September 2001, Cho told investors that the Centerpoint IPO would not happen, because a South Korean group had bought Centerpoint. Instead, Cho offered to roll investor funds into purchasing shares of AOL/Time Warner, Inc. in anticipation of its IPO. In 2002 and 2003, investors rolled their funds into what they believed were the purchase of shares of AOL/Time Warner.

18. In late 2003 or early 2004, Cho told investors that the AOL/Time Warner IPO would not happen. Cho then offered to roll investors' funds into purchasing shares of Google, Inc. in anticipation of Google's IPO. As part of this investment, Cho flew into Chicago-O'Hare airport to meet investors in early 2004. Based on Cho's representations, most investors ended up rolling their funds into what they believed was the purchase of shares of Google. Cho told investors who wanted to withdraw funds that their group was either "all in or all out."

19. Between August 2002 and September 2007, Cho received deposits of over \$6 million into his individual checking account at BoA.

20. In approximately January 2009, Cho offered investors the purchase and sale of Facebook shares in anticipation of Facebook's expected IPO. Cho provided investors with false confirmations of these purchases, including sending a text message to at least one investor informing him that he had purchased 46,000 shares of Facebook stock for that investor for \$230,000, when in fact no such purchase had taken place. In approximately April 2009, Cho offered investors the purchase and sale of Rosetta Stone shares. Cho claimed that Goldman Sachs was holding Rosetta Stone shares purchased for unnamed hedge funds that had since gone out of business. Cho told investors there was no risk of loss with the investment. Cho further told investors that his status as a preferred customer at Goldman Sachs would allow them to acquire ownership of the shares.

False and Misleading Statements to Investors

21. Throughout the scheme, Cho misrepresented to investors his experience in the financial industry and his connection to Goldman Sachs. Cho told investors that he had worked at Goldman Sachs, still had an account with and made his investments through Goldman Sachs, and/or that Goldman Sachs still considered him a preferred client. These statements were false as Cho never worked at Goldman Sachs or had an account at Goldman Sachs.

22. Further, Cho misrepresented to investors their funds were being used to purchase shares of Centerpoint, AOL/Time Warner, Google, Facebook and Rosetta Stone for the investors when they were not. Instead, Cho used investor funds for personal trading, the personal expenses of himself and his family, and also used investor funds to repay certain investors.

23. Cho also misrepresented to investors in both Google and Rosetta Stone that additional funds would be needed to satisfy a purported U.S. tax liability in connection with the purchase of the shares. In reality there was no tax liability.

Use of Funds and Trading Activity

24. Since 2001, Cho has traded in at least nine different accounts in his name, or the names of his wife and children, that he identified to the SEC.

25. Cho never purchased securities of Centerpoint, AOL/Time Warner, Google, Facebook or Rosetta Stone for investors in those accounts.

26. Cho only purchased Google options and shares for his retirement accounts and the accounts of his wife and children but only after the Google IPO.

Ongoing Activity

27. Cho's solicitation and receipt of investor funds is continuing. BoA records show that Cho received \$293,680.00 in wire transfers and \$45,000 in checks from various individuals in different states between July 3, 2009 and August 28, 2009, the most recent period for which the SEC has obtained bank records.

COUNT I

**Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)(1)]**

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. As is set forth more fully herein, Cho, in the offer or 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 employed devices, schemes or artifices to defraud.

30. Cho knowingly or recklessly engaged in the fraudulent conduct described above.

31. By reason of the foregoing, Cho violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II
Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

32. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

33. Cho, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly have obtained money or property by means of untrue statements of material fact or 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; or engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon purchaser of securities.

34. By reason of the foregoing, Cho violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III
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]

35. Paragraphs 1 through 27 are realleged and incorporated by reference.

36. Cho, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails: (a) used or employed a device, scheme, or artifice to defraud; (b) made untrue statements of material fact or 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) and engaged in acts,

practices, or courses of business which operated or would operate as a fraud and deceit upon the purchasers and prospective sellers of such securities.

37. Cho acted knowingly or recklessly when they engaged in the fraudulent conduct described above.

38. By reason of the foregoing, Cho violated 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].

COUNT IV

**Violations of Sections 206(1) and 206(2) of the Advisers Act
[15 U.S.C. §§ 80b-6(1) and 80b-6(2)]**

39. Paragraphs 1 through 27 are realleged and incorporated by reference.

40. Cho, directly or indirectly, knowingly or recklessly, by use of the mails or any means or instrumentality of interstate commerce, while acting as an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], has: (a) employed devices, schemes, and artifices to defraud a client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client. As a result, Cho violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

41. Cho knew or was reckless in not knowing of the activities described herein constituting violations of Sections 206(1) and 206(2) of the Advisers Act.

42. By reason of the foregoing, Cho has violated, and unless enjoined will likely again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

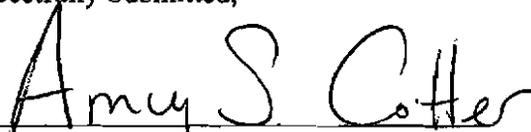
RELIEF REQUESTED

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

- A. Finding that the Defendant Cho committed the violations alleged against him herein;
- B. Permanently enjoining and restraining Defendant Cho from further violations of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2) and (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], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(l) and 80b-6(2)];
- C. Ordering Defendant Cho to pay as disgorgement the full amount of the all funds raised through his offering, less amounts previously returned to investors, plus prejudgment interest thereon;
- D. Ordering Defendant Cho to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] , Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];
- E. Appointing a Receiver over Cho and any entities he owns or controls, for the purposes of identifying and marshal Cho's assets and distributing to injured investors funds collected by the Receiver or paid into the registry of the Court;
- F. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

G. Granting such other and additional relief as this Court deems appropriate.

Respectfully Submitted,

Handwritten signature of Amy S. Cotter in black ink.

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