

RBS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TIMOTHY J. MCGEE,
MICHAEL W. ZIRINSKY,
ROBERT L. ZIRINSKY,
PAULO LAM, a/k/a PAUL LAM and
MARIANNA SZE WAN HO,

Defendants,

KELLIE F. ZIRINSKY,
JILLYNN ZIRINSKY,
GERALDINE A. ZIRINSKY, and
MARY L. ZIRINSKY,

Relief Defendants.

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1296

Civil Action No.

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: MAR 13 2012
ATTEST: Steve Tomco
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY OF THE ACTION

1. This matter involves unlawful insider trading in the common stock of Philadelphia Consolidated Holding Corp. ("PHLY"), a Pennsylvania-based insurance holding company, in advance of the company's July 23, 2008 public announcement of its sale to Tokio Marine Holdings, Inc. ("Tokio Marine"), by two registered representatives, Timothy J. McGee ("McGee"), and Michael W. Zirinsky, and three others, Robert L. Zirinsky, Paulo Lam ("Lam"), and Marianna sze wan Ho ("Ho") (collectively, the "Defendants"). On the day of the announcement, the closing price of PHLY stock increased more than 64 percent.

2. McGee breached duties of trust and confidence that he owed to a PHL Y senior executive (the “Insider”) – with whom he had a long-term relationship through Alcoholics Anonymous (“AA”) – by misappropriating material nonpublic information about the merger negotiations from the Insider. The PHL Y executive made the disclosure to McGee in confidential discussions he had with him, including after an AA meeting, about the pressures the Insider was confronting. McGee used the material nonpublic information to make hundreds of thousands of dollars in ill-gotten profits for himself, and to tip his friend and business associate, Michael Zirinsky.

3. Michael Zirinsky then traded on the information and then tipped his father, Robert Zirinsky, and his friend, Lam, a Hong Kong resident. Lam then tipped his business partner, as well as the husband of Ho, both also residents of Hong Kong. Robert Zirinsky, Lam, and Ho each bought PHL Y stock based on the illegal tips.

4. Michael Zirinsky also purchased PHL Y stock on behalf of his wife Kellie F. Zirinsky, sister Jillynn Zirinsky, mother Geraldine Zirinsky, and grandmother Mary L. Zirinsky (collectively, the “Relief Defendants”) in accounts for which he was the broker.

5. All Defendants and Relief Defendants made significant profits from the purchases of PHL Y stock based on material nonpublic information. McGee realized profits of \$292,128; the Zirinsky family realized profits of \$562,673; Lam realized \$837,975; and Ho realized \$110,580. In total, the Defendants and Relief Defendants realized profits of \$1,803,356 from the trading of PHL Y stock.

6. By knowingly or recklessly engaging in the conduct described in this complaint, Defendants McGee, Michael Zirinsky, Robert Zirinsky, Lam, and Ho all violated and, unless

enjoined and restrained, will continue to violate 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 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1] to enjoin such acts, practices, and courses of business and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

8. The Court has jurisdiction over this action pursuant to Sections 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1, and 78aa].

9. Venue in this district is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Among other things, certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the Eastern District of Pennsylvania.

DEFENDANTS

10. **Timothy J. McGee**, age 48, lives in Malvern, Pennsylvania. Since 1988 McGee has been a registered representative and financial advisor with Ameriprise Financial Services, Inc. (“Ameriprise”), a broker-dealer registered with the Commission. McGee conducted business through Timothy J. McGee & Associates until 2009 when he formed, with Defendant Michael Zirinsky and others, Frazer, McGee, Wayman, Zirinsky & Associates. McGee and Michael Zirinsky have known each other since 1995 and shared office space during the relevant time period. McGee holds Series 7 and 63 securities licenses and is a Certified Financial Planner, Chartered Financial consultant, and Certified Fund Specialist.

11. **Michael W. Zirinsky**, age 38, lives in Schwenksville, Pennsylvania. Michael Zirinsky has been a registered representative and financial advisor with Ameriprise since 1995. Michael Zirinsky conducted business through Advisory Associates, LLC until 2009 when he formed, with McGee and others, Frazer, McGee, Wayman, Zirinsky & Associates. Michael Zirinsky holds Series 7 and 63 securities licenses and is a Certified Financial Planner.

12. **Robert L. Zirinsky**, age 66, lives in Quakertown, Pennsylvania. He is the father of Michael and Jillynn Zirinsky, the husband of Geraldine Zirinsky, and the son of Mary Zirinsky. Robert Zirinsky owns and operates a temporary staffing business with offices in suburban Philadelphia, Pennsylvania.

13. **Paulo Lam**, also known as Paul Lam, age 39, is a citizen of the People's Republic of China and a resident of Hong Kong. He has been Michael Zirinsky's friend for more than 15 years. Lam owned 29 percent of the Ares Fund, a purported Hong Kong-based hedge fund that has since dissolved.

14. **Marianna sze wan Ho**, age 38, is a citizen of the People's Republic of China and a resident of Hong Kong. She is the wife of a friend of Lam.

RELIEF DEFENDANTS

15. **Kellie F. Zirinsky**, age 38, lives in Schwenksville, Pennsylvania, and is married to Michael Zirinsky.

16. **Jillynn Zirinsky**, age 36, lives in Philadelphia, Pennsylvania. Jillynn is the sister of Michael Zirinsky.

17. **Geraldine A. Zirinsky**, age 67, lives in Quakertown, Pennsylvania. Geraldine is the wife of Robert Zirinsky and the mother of Michael Zirinsky.

18. **Mary L. Zirinsky**, age 89, lives in Catasauqua, Pennsylvania. Mary is the mother of Robert Zirinsky and the grandmother of Michael Zirinsky.

RELATED PERSON AND ENTITIES

19. **The Insider** lives in Pennsylvania. During all relevant times, the Insider was a senior executive of Philadelphia Consolidated Holding Corp. and a significant shareholder.

20. **Philadelphia Consolidated Holding Corp.** was a publicly held insurance holding company with headquarters in Bala Cynwyd, Pennsylvania. The company's stock was registered under Section 12(g) of the Exchange Act and was traded on the NASDAQ Global Select Market under the ticker symbol "PHLY." The company specialized in commercial property and casualty insurance products through its operating subsidiary, Philadelphia Insurance Company. On December 1, 2008, PHLY closed its merger with a subsidiary of Tokio Marine. Pursuant to the merger agreement, PHLY became a wholly-owned subsidiary of Tokio Marine. As a result of this transaction, PHLY terminated its registration with the Commission.

21. **Tokio Marine Holdings, Inc.** is a Japan-based, publicly traded, property, casualty, life insurance and reinsurance company listed on both the Tokyo and Osaka Stock Exchanges. Tokio Marine purchased PHLY pursuant to a merger agreement that closed on December 1, 2008. PHLY now operates as a wholly-owned subsidiary of the newly-formed subsidiary Tokio Marine Group North.

FACTS

A. The Merger Negotiations and the Involvement of the Insider

22. PHLY executive management began contemplating a possible sale of the company in the fall of 2007, and in early spring 2008 began initial discussions with two possible buyers, including Tokio Marine.

23. From April through July 2008, PHL Y senior management conducted negotiations with Tokio Marine and Tokio Marine engaged in due diligence. The Insider participated in, and knew of, the status and progress of the negotiations and due diligence.

24. All aspects of the negotiations between PHL Y and Tokio Marine and due diligence were nonpublic.

25. In early April 2008, PHL Y and Tokio Marine signed a confidentiality agreement.

26. On or about June 17, 2008, Tokio Marine indicated to PHL Y a willingness to pay \$61.50 per share of PHL Y stock and, on or about June 23, PHL Y's board of directors signed an exclusive negotiating agreement with Tokio Marine that required action by PHL Y within 30 days.

27. Negotiations progressed throughout the next several weeks. On or about July 22, 2008, PHL Y's board of directors approved the final merger agreement and resolved to recommend adoption of the merger agreement to PHL Y's shareholders.

28. On July 23, 2008, before the U.S. stock markets opened, both companies publicly announced that Tokio Marine would acquire PHL Y in a cash deal for \$61.50 per share with an expected closing date in the fourth quarter of 2008. Before the public announcement, the merger discussions between the two companies were nonpublic and neither company had announced any ongoing negotiations.

29. Between April 22, 2008 and July 22, 2008, the day before the public announcement of the merger with Tokio Marine, PHL Y's common stock traded in a range of \$31.22 to \$38.64 per share. On July 22, 2008, the day before the announcement, shares of PHL Y common stock closed at \$35.55. Following the merger announcement, on July 23, PHL Y's share price rose to a high of \$59.10 and closed at \$58.43, a 64 percent increase.

30. The merger closed on December 1, 2008, with current shareholders receiving \$61.50 per share of PHL Y common stock.

B. The Insider and McGee Shared a Relationship of Trust and Confidence

31. The Insider began attending Alcoholics Anonymous (“AA”) meetings in 1999.

32. Shortly after beginning to attend AA meetings, the Insider met McGee at an AA meeting that he and McGee both attended. At that time, the Insider was a senior executive of PHL Y and McGee was a registered representative with Ameriprise.

33. Individuals who participate in AA and share information at meetings or in private discussion with other AA members are asked to abide by a policy of anonymity, which is the “Twelfth Tradition” of AA. A purpose of the “Twelfth Tradition” is to encourage participants to speak with others before, during, or after each AA meeting.

34. The confidentiality of information shared between members of the AA program is underscored at each meeting, where participants are reminded that “what is discussed here stays here.” Confidentiality is integral to the operation of AA, and those who attend meetings and participate in AA, including the Insider and McGee, understand the importance of confidentiality.

35. The Insider developed a relationship with McGee because he believed that he and McGee were similar in certain ways. Specifically, they both participated in AA, were successful businessmen, had similar family lives, and were accomplished triathletes. The Insider also believed McGee could help him because McGee had a long, successful history of sobriety.

36. As their relationship developed, the Insider shared information with McGee about personal, family and professional matters in his life that were impacting his ability to stay sober. The Insider considered McGee to be a “confidante.”

37. McGee also confided in the Insider about private and personal matters in his life. For example, McGee shared confidences with the Insider regarding his family, his personal relationships, his business, and his ability to stay sober.

38. The Insider did not consistently attend AA meetings from 2005 until the beginning of 2008. However, the Insider and McGee stayed in contact during the Insider's absence from AA meetings.

39. By 2008, the Insider and McGee had known each other for almost a decade, and they had forged a close relationship in which the men routinely shared confidences about each other's personal lives and problems impacting them professionally. McGee assured the Insider on many occasions that he would keep the information they discussed confidential.

40. During the times that the Insider attended AA meetings, the Insider and McGee generally talked to each other in person at or immediately after meetings, or by telephone in the morning if the two men did not see each other at an AA meeting.

41. The Insider and McGee developed a friendship that extended beyond AA, occasionally training together for triathlons or traveling with large groups for triathlon events.

42. McGee told the Insider that he could confide anything to him, and suggested more than once to the Insider that he should invest his money with McGee because he knew the Insider's personal history, had kept the Insider's confidences in the past, and would continue to do so, and could better serve the Insider's financial and investment needs because of this relationship.

43. During all relevant times, the Insider and McGee shared a relationship of trust and confidence.

C. The Insider Told McGee Material Nonpublic Information about the PHL Y Merger Negotiations

44. During the spring and early summer of 2008, while the Insider participated in the negotiations to sell PHL Y, he was under significant pressure to ensure a successful sale. In addition to the potential impact on his own personal, professional, and financial future, the Insider's extended family had significant financial and professional stakes in the company that would be greatly impacted by the outcome of the merger.

45. With the pressure increasing as negotiations progressed, the Insider resumed regularly attending AA meetings on or about June 30, 2008, and attended at least one, and sometimes two, AA meetings each day during much of July. During that time, he either saw or spoke with McGee on an almost daily basis.

46. In early July 2008, immediately after an AA meeting, the Insider confided to McGee that he had been drinking as a result of mounting pressure, and revealed to McGee that the source of the pressure was ongoing confidential negotiations to sell PHL Y. The Insider told McGee that the stress generated from his participation in the negotiations was affecting his ability to remain sober and that his recent drinking was having a negative impact on his personal life.

47. In response, McGee expressed interest in the details of the PHL Y sale and questioned the Insider about the details of the impending deal. The Insider told McGee, among other things, that Tokio Marine would be the acquirer, and that the sale was getting "close" and that the deal was going to be for a good price, at approximately "three times book" value of the company. The Insider also told McGee that he was going to continue working at PHL Y, and that he did not expect the business to be operated differently under the new Japanese management.

48. The Insider and McGee had several conversations throughout the first part of July. In addition to face-to-face conversations, McGee and the Insider had telephone contact for three minutes at 5:09 pm on July 16, 2008, and for two minutes at 8:26 am on July 17. The negotiations were at a critical point during this time, with counsel for both companies exchanging drafts of the various transaction documents, including the merger agreement.

49. The information that the Insider provided to McGee about the impending PHL Y merger was material and nonpublic.

D. McGee Purchased Stock on the Basis of Material Nonpublic Information that he Misappropriated from the Insider

50. Based on the material nonpublic information McGee learned and misappropriated from the Insider, McGee purchased PHL Y stock in his brokerage accounts at Ameriprise and Broker A.

51. After learning about the impending merger from the Insider, on July 14, 2008, McGee entered an order for 1,000 PHL Y shares. At approximately 9:35 am on July 17, McGee began purchasing an additional 8,250 shares of PHL Y. He bought another 1,000 shares on July 18. On July 22, McGee purchased an additional 500 shares following an eight minute telephone conversation with the Insider earlier that day.

52. McGee bought the majority of his PHL Y stock on margin and funded the remaining purchases with sales of existing securities and money market funds, along with a cash deposit of \$17,500. In total, McGee purchased 10,750 shares of PHL Y stock during July 2008 at a cost of \$359,248.

53. On July 25, 2008, two days after the public announcement, McGee sold 3,250 shares of PHL Y for \$58.50 per share. He held the balance of his PHL Y stock until the merger

closed on December 1, 2008, receiving \$61.50 per share. McGee realized profits of \$292,128 from his illegal trading of PHLX stock.

54. Subsequent to the announcement of the merger, McGee admitted to the Insider that he had traded on the basis of the material nonpublic information about the merger that he learned from the Insider and that he had made money, as a result.

E. McGee Tipped Michael Zirinsky, Who Bought PHLX Stock for Himself and Family Members, and Tipped Robert Zirinsky and Paulo Lam

55. The sequence and pattern of contacts and trading demonstrates that McGee not only traded on the basis of the material nonpublic information that he misappropriated from the Insider, he also tipped his colleague, Michael Zirinsky, who traded on the information for himself and family members, and tipped his father, Defendant Robert Zirinsky, as well as a friend living in Hong Kong, Defendant Lam.

56. McGee and Michael Zirinsky are both registered representatives associated with Ameriprise, and during the relevant time period, were friends as well as business associates.

57. They have worked together in the same office space since at least 1995, and during the relevant time period, McGee and Michael Zirinsky's offices were in close physical proximity to one another.

58. During the evening of July 16, 2008, at 5:09 pm, the Insider and McGee had a brief telephone conversation. Later that evening, at 9:28 pm, McGee and Michael Zirinsky spoke for five minutes.

59. The next morning, on July 17, 2008, at 8:26 am, McGee placed a call to the Insider that lasted two minutes.

60. Almost immediately thereafter, at 8:34 am on July 17, 2008, McGee called Michael Zirinsky on his cell phone. They spoke for seven minutes.

61. Seconds after the call between McGee and Michael Zirinsky ended, Michael Zirinsky attempted to reach his father at three different telephone numbers, and then called Lam. Later that morning, Michael Zirinsky called his sister, Jillynn.

62. Between 9:59 am and 11:15 am on July 17, Michael Zirinsky purchased PHL Y stock in three of his Ameriprise accounts and the Ameriprise accounts of Kellie Zirinsky, his wife; Jillynn Zirinsky, his sister; Geraldine Zirinsky, his mother; and Mary Zirinsky, his grandmother. Michael Zirinsky also entered trades in IRA accounts held by his father and mother, Robert Zirinsky and Geraldine Zirinsky.

63. At 10:10 am on July 17, Robert Zirinsky also purchased additional shares of PHL Y stock in an account at Broker B that he held jointly with Geraldine Zirinsky.

64. Prior to July 17, 2008, none of Michael Zirinsky's family members had ever previously purchased PHL Y stock. Collectively, on July 17, the Zirinsky family purchased a total of 21,560 shares of PHL Y stock for \$716,964.

65. The purchases of the PHL Y stock in the Zirinsky family accounts were highly unusual and accounted for a high percentage of the account values.

66. Michael Zirinsky purchased 1,805 PHL Y shares in his own accounts for \$59,981. Those purchases constituted 66 percent, 95 percent and 100 percent of the respective account values in the three accounts he used to make the purchases.

67. Michael Zirinsky purchased 1,210 shares in his sister Jillynn Zirinsky's account for \$40,487.

68. Michael Zirinsky also purchased 7,400 PHL Y shares in his grandmother Mary Zirinsky's account for \$248,243.

69. Michael Zirinsky purchased 1,975 PHL Y shares for \$65,517 in two accounts held by his wife Kellie. Those purchases accounted for 99 percent and more than 100 percent of the account values.

70. Michael Zirinsky funded the purchases in his own accounts and in those of his wife, sister, and grandmother by selling a significant amount of the securities holdings in the respective accounts earlier in the morning of July 17. He also deposited additional funds into the accounts for the purchases he made on behalf of himself and his wife.

71. Michael Zirinsky executed all of his family's purchases of PHL Y stock in their Ameriprise accounts. Michael Zirinsky had discretionary authority over his wife's account, and exerted considerable influence over his family's investment decisions.

F. Robert Zirinsky's Trading

72. On July 17, 2008, Robert Zirinsky purchased PHL Y stock in three accounts associated with him and his wife, Geraldine. Robert Zirinsky purchased PHL Y stock in a joint brokerage account with his wife at Broker B and IRA accounts held by each of them individually at Ameriprise. In total, he directed the purchase of 9,170 PHL Y shares between 9:59 am and 10:11 am, for a total cost of \$302,736. The cost represented 81 percent of the total value of the three accounts at the time of purchase. Robert and Geraldine Zirinsky ultimately realized combined profits of \$241,977.

73. The PHL Y trades placed by Robert Zirinsky in the joint account were highly unusual and inconsistent with the other trading in the account throughout 2008. At the beginning of July 2008, the Broker B account held securities worth \$38,121 and had a margin balance of \$21,695, for a net portfolio value of \$16,426. On July 17, Robert Zirinsky bought 2,000 PHL Y shares in the account for \$66,240, temporarily quadrupling the margin balance to \$87,459 until

July 22, when Robert Zirinsky deposited more than \$25,000 to cover the excessive margin balance. The PHL Y position was over six-times the size of the next largest position in the account. From January through June 2008, only one other trade had been executed in the account, and other than PHL Y, there were no other trades after July 1 through December 1, 2008, when the merger closed.

74. The PHL Y trades in Robert and Geraldine Zirinsky's IRA accounts were highly unusual and inconsistent with the other trading in the accounts throughout 2008. At the beginning of July 2008, Robert Zirinsky's IRA account had a value of \$161,487. From January through June 2008, no trades took place in the account. On July 17, Robert Zirinsky directed the purchase of 3,150 PHL Y shares in the account for \$103,635, comprising 65 percent of the account value. In order to fund the purchase of PHL Y stock, Robert Zirinsky directed that the entire position of Green Mountain Coffee Roasters stock, which had been held in the account since at least 2004, be sold. The sale of that stock generated \$103,899. The PHL Y position was over three-times larger than the next largest position in the account.

75. After selling the shares of PHL Y stock after the public announcement of the merger, Robert Zirinsky repurchased the same number of shares of Green Mountain Coffee Roasters stock previously sold in his IRA account.

76. At the beginning of July 2008, Geraldine Zirinsky's IRA account at Ameriprise had a value of \$194,732. On July 17, Robert Zirinsky directed that 4,020 PHL Y shares be purchased in the account for \$132,861, comprising 68 percent of the account value. The purchase was funded with the proceeds of the sale of certain mutual funds, including \$124,522 worth of Columbia Acorn Fund. The PHL Y position was over seven-times larger than the next largest position in the account.

77. After the merger closed, and all PHL Y shares were sold, several trades were subsequently executed in the account, including the repurchase of \$115,000-worth of Columbia Acorn Fund using the proceeds of the PHL Y sales.

G. The Zirinsky Family Profits

78. Much of the stock purchased by Zirinsky family members was sold on the day of or within days of the merger announcement. The remaining shares were held until the merger closed on December 1, 2008, receiving \$61.50 per share.

79. Michael Zirinsky sold 2,665 PHL Y shares on July 23 from the accounts held by him and his wife, 745 shares on October 8 and October 9, and held the remaining 370 shares until December 1. Michael Zirinsky's accounts realized profits of \$46,396, and Kellie Zirinsky's accounts realized profits of \$49,628.

80. Jillynn Zirinsky's account sold 1,000 PHL Y shares on the day of the announcement, and the remaining 210 shares were held until December 1. Jillynn Zirinsky realized profits of \$30,538.

81. Mary Zirinsky sold 4,000 shares on the day of the announcement, and the remaining 3,400 shares were held until December 1. She realized profits of \$194,134.

82. Robert Zirinsky directed the sale of 1,000 of the PHL Y shares in the brokerage account he held jointly with his wife at Ameriprise on July 28, 2008, receiving \$58.36 per share. On December 1, the joint account received \$61.50 per share for the remaining 1,000 PHL Y shares. In total, the joint account account realized profits of \$53,620.

83. On July 23, 2008, the day of the announcement, Robert Zirinsky directed the sale of 1,600 PHL Y shares from his IRA account at \$58.21 per share. On August 7, 2008, Robert

Zirinsky directed the sale of the remaining 1,550 PHL Y shares from his IRA account for \$58.83 per share. In total, Robert Zirinsky's IRA account realized profits of \$80,688.

84. On July 23, 2008, the day of the announcement, Robert Zirinsky directed the sale of 2,000 PHL Y shares from Geraldine Zirinsky's IRA at \$58.15 per share. The remaining 2,020 PHL Y shares were held until the merger closed on December 1, 2008, and received \$61.50 per share. In total, Geraldine Zirinsky's IRA account realized profits of \$107,669.

85. Collectively, the Zirinsky family realized \$562,673 from the illegal purchases and subsequent sales of PHL Y stock.

H. Michael Zirinsky Also Tipped Lam, Who Traded and Tipped Others in Hong Kong

86. The sequence of contacts and trading demonstrates that Michael Zirinsky tipped Lam material nonpublic information about the PHL Y merger negotiations, and that Lam traded and told others material nonpublic information who also traded.

87. After speaking with McGee on the morning of July 17, in addition to calling family members and purchasing PHL Y stock himself, Michael Zirinsky contacted his friend Lam in Hong Kong.

88. Lam and Michael Zirinsky have been close friends since 1994 when they were introduced by Zirinsky's college roommate. Since their graduation from college, Michael Zirinsky has traveled to Hong Kong to visit Lam, attended his wedding, and vacationed with him on multiple occasions.

89. At 6:03 am EDT (6:03 pm Hong Kong time) on July 17, Michael Zirinsky sent Lam a text message.

90. At 8:47 am, only minutes after the end of the conversation between Michael Zirinsky and McGee, Michael Zirinsky called Lam and spoke to him for eight minutes and then called Lam again at 9:00 am for two minutes.

91. At 10:20 am that morning, Lam bought the first 12,700 of 33,000 total shares of PHL Y he eventually purchased between July 17 and July 21. Lam had not previously owned PHL Y stock.

92. Lam purchased nearly one-third of the PHL Y stock in his personal account on margin for a total cost of \$1,123,973. From the time the account opened, in January 2007, Lam used the account primarily for currency trading and held only two relatively small equity positions prior to his purchase of PHL Y stock. Lam sold all of the PHL Y shares on the day of the merger announcement and realized profits of \$783,527.

93. On July 17, at 11:19 pm and 11:35 pm, Lam also spoke to his then-business partner (the “Business Partner”) in a small Hong Kong-based hedge fund, the Ares Fund. During the relevant time period, Lam owned approximately 29% of the Ares Fund.

94. At 10:11 am on July 18, 2008, the Business Partner purchased 4,800 shares of PHL Y in his personal brokerage account. On July 21, he purchased 5,200 additional shares of PHL Y and on July 22 he purchased 4,000 additional shares of PHL Y – all in his personal brokerage account. These purchases cost \$480,973. These purchases generated a margin balance of \$121,525. Since the Business Partner had opened this account in July 2005, the Business Partner had traded almost exclusively in futures and had purchased only two stocks other than PHL Y. His PHL Y purchases were nine times larger than the next largest equity positions previously purchased in that account. At the times of his PHL Y purchases, the account did not hold any stocks and the PHL Y purchases accounted for 55% of the account’s value.

95. The Business Partner also purchased 8,000 PHL Y shares on July 22 in the Ares Fund account at a cost of \$276,547. The stated investment objective of the Ares Fund was to “generate superior absolute return on capital through the trading of futures . . .”. The Ares Fund traded almost exclusively in futures and the PHL Y purchases accounted for the only equities purchased in the account since the account was opened in October 2007.

96. On the day of the announcement, the Business Partner sold all of the PHL Y shares he had purchased, realizing profits of \$331,495 in his personal account and \$187,753 for the Ares Fund. Because Lam owned approximately 29% of the Ares Fund, his portion of the profits was \$54,448.

97. Shortly after talking with Michael Zirinsky, Lam also contacted a friend, who is also a resident of Hong Kong, who is married to Ho. Shortly after that conversation, Ho purchased 4,500 PHL Y shares for \$152,239 on July 18. Since she opened the account in March 2007, Ho did not previously own the stock and her purchases were triple the value of any equities previously purchased in the account.

98. Ho sold all of the PHL Y shares on the day of the merger announcement and realized profits of \$110,580.

I. McGee, Michael Zirinsky, Robert Zirinsky, Paulo Lam, and Marianna szewan Ho Violated the Federal Securities Laws

99. The Insider was directly involved with, and aware of, the ongoing confidential negotiations surrounding the impending PHL Y merger, and knew that he was in possession of material nonpublic information regarding the impending merger.

100. The confidential information regarding the impending PHL Y merger that the Insider provided to McGee was material and nonpublic. A reasonable investor would have

viewed this as being important to his investment decision or a significant alteration of the total mix of information available to the public.

101. McGee, an experienced registered representative with over twenty years of experience, knew that it was a violation of the securities laws to purchase stock while in possession of material nonpublic information.

102. McGee knew or was reckless in not knowing that the material nonpublic information communicated to him by the Insider regarding the impending PHL Y merger had been shared with the expectation and understanding that it would be maintained in confidence.

103. In breach of a duty of trust and confidence, McGee misappropriated the material nonpublic information regarding the impending PHL Y merger from the Insider, and then purchased shares of PHL Y stock on the basis of that information and tipped material nonpublic information regarding the impending PHL Y merger to his friend and business associate Michael Zirinsky.

104. McGee tipped material nonpublic information about the impending merger to Michael Zirinsky, knowing he would trade on the basis of that information, or recklessly indifferent to whether he would trade, and with the expectation of receiving a benefit.

105. Michael Zirinsky, an experienced registered representative with over ten years of experience, knew that it was a violation of the securities laws to purchase stock while in possession of material nonpublic information.

106. Michael Zirinsky knew, or should have known, that the material nonpublic information that he received from McGee had been obtained in breach of a fiduciary duty or obligation arising from a similar relationship of trust and confidence.

107. On the basis of the material nonpublic information tipped by McGee, Michael Zirinsky purchased PHL Y stock on his own behalf, and on behalf of his wife (Kellie Zirinsky), sister (Jillynn Zirinsky), and grandmother (Mary Zirinsky).

108. Michael Zirinsky also tipped his father, Robert Zirinsky, and his friend Lam material nonpublic information regarding the impending PHL Y merger, knowing they would trade on the basis of that information, or recklessly indifferent to whether they would trade, and with the expectation of receiving a benefit.

109. Robert Zirinsky purchased PHL Y stock on the basis of the material nonpublic information tipped by Michael Zirinsky.

110. Robert Zirinsky knew, or should have known, that the material nonpublic information that he received from Michael Zirinsky had been obtained in breach of a fiduciary duty or obligation arising from a similar relationship of trust and confidence.

111. Lam purchased PHL Y stock on the basis of the material nonpublic information tipped by Michael Zirinsky.

112. Lam knew, or should have known, that the material nonpublic information that he received from Michael Zirinsky had been obtained in breach of a fiduciary duty or obligation arising from a similar relationship of trust and confidence.

113. Lam tipped material nonpublic information regarding the impending PHL Y merger to Ho and her husband, knowing they would trade on the basis of that information, or recklessly indifferent to whether they would trade, and with the expectation of receiving a benefit.

114. Ho purchased PHL Y stock on the basis of the material nonpublic information tipped by Lam.

115. Ho knew, or should have known, that the material nonpublic information received from Lam had been obtained in breach of a fiduciary duty or obligation arising from a similar relationship of trust and confidence.

CLAIMS FOR RELIEF

FIRST CLAIM

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

(Against All Defendants)

116. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 115, inclusive, as if they were fully set forth herein.

117. The information concerning the impending PHLX merger that the Insider told to McGee was material and nonpublic.

118. At all times relevant to the complaint, Defendants acted knowingly or recklessly.

119. By engaging in the conduct described above, Defendants, directly or indirectly, in connection with the purchase or sale of securities, by use of 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;
- b. made untrue statements of material facts 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; and/or
- 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.

120. By engaging in the foregoing conduct, Defendants 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

Claims with Respect to Relief Defendants

(Against All Relief Defendants)

121. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 120, inclusive, as if they were fully set forth herein.

122. Relief Defendants Kellie Zirinsky, Jillynn Zirinsky, Geraldine Zirinsky, and Mary Zirinsky each received gains from trades based on material nonpublic information, over which they each have no legitimate claim.

123. Relief Defendants Kellie Zirinsky, Jillynn Zirinsky, Geraldine Zirinsky, and Mary Zirinsky obtained the gains described above as part, and in furtherance of, the securities law violations alleged above, under circumstances in which it is not just, equitable, or conscionable for them to retain the funds.

124. By reason of the foregoing, Relief Defendants Kellie Zirinsky, Jillynn Zirinsky, Geraldine Zirinsky, and Mary Zirinsky have been unjustly enriched and must disgorge the amount of their ill-gotten gains.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter Final Judgments:

I.

Permanently restraining and enjoining Defendants and their 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, 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];

II.

Ordering Defendants to disgorge all unlawful trading profits and other ill-gotten gains received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon, including, as to each of the Defendants, the trading profits and other ill-gotten gains of their direct and downstream tippees, and prejudgment interest thereon;

III.

Ordering Defendants to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

IV.

Ordering the Relief Defendants to disgorge all trading profits and other ill-gotten gains to which they do not have a legitimate claim that they received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon; and

V.

Granting such other and further relief as this Court may deem just, equitable, and necessary.

Respectfully submitted,



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