

SUSAN F. LA MARCA (California State Bar No. 215231)
LaMarcaS@sec.gov
 JINA L. CHOI (New York State Bar No. 2699718)
ChoiJ@sec.gov

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HELANE L. MORRISON (California State Bar No. 127752)
 Attorneys for Plaintiff
 SECURITIES AND EXCHANGE COMMISSION
 44 Montgomery Street, Suite 2600
 San Francisco, California 94104
 Telephone: (415) 705-2500
 Facsimile: (415) 705-2501

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON

'051162 AA

SECURITIES AND EXCHANGE
 COMMISSION,

Plaintiff,

v.

PHILIP EVANS and PAUL EVANS,

Defendants.

Case No. _____

COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER RELIEF

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

SUMMARY OF THE ACTION

1. Defendant Philip Evans, an employee in the finance department of Merix Corporation ("Merix" or the "Company"), traded on confidential information he learned about the Company while at work and shared this information with his brother, allowing the pair to make over \$400,000 in illegal trading profits.

2. On May 4, 2004, Philip Evans learned from his boss that Merix would likely announce during the following week that Merix's earnings were falling short of investor expectations. Although told that the information was confidential, and aware that a trading "black-out" was in effect prohibiting him from trading, Philip Evans sold all the Merix stock he held in his brokerage account the next morning. In addition, Philip used an account he

maintained in the name of his fiancée to sell Merix stock short, a trading strategy based on the expectation that the price of the stock will go down. Moreover, after learning the confidential financial information on May 4, Philip Evans called his brother Paul Evans to relay the news. Beginning the next morning and continuing throughout the following week, Paul Evans sold Merix stock short and bought Merix “put options” – securities of value only if the Company’s stock price declined in the short term. Also, Philip Evans advised his mother that she should sell all her Merix stock and Paul Evans recommended to a friend that he should buy short-term put options in Merix. On May 13, Merix announced the negative news, and its stock price plummeted by 30 percent. Philip Evans illegally profited and avoided losses of approximately \$30,000, while Paul Evans made over \$400,000 in illegal profits. Philip Evans’ mother avoided losses of approximately \$3,000 and Paul Evans’ friend made approximately \$14,000 on his Merix trades.

3. By trading on the basis of confidential information Philip Evans learned through his employment and sharing that material nonpublic information with others, Defendants violated Section 17(a) of the Securities Act of 1933 (“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. The Commission seeks a court order permanently enjoining Defendants from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; requiring that Defendants disgorge their ill-gotten gains and those of the persons who traded based on their revealing material nonpublic information, plus prejudgment interest; and imposing civil money penalties against each of them.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. §§ 77t(b)] and Sections 21(d), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1].

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

6. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

7. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Defendant Philip Evans resides within the District of Oregon and acts and transactions constituting the violations alleged in this Complaint occurred within the District of Oregon.

DEFENDANTS

8. Defendant Philip Evans, age 43, resides in Beaverton, Oregon. At all relevant times, Philip Evans was employed by Merix as a financial analyst.

9. Defendant Paul Evans, age 41, resides in Mt. Shasta, California. At all relevant times, Paul Evans was a semi-retired landscape contractor and a part owner of a small business that sells promotional products.

RELEVANT ENTITY

10. Merix Corporation is an Oregon corporation that manufactures circuit boards. Its principal place of business is Forest Grove, Oregon. Merix's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is publicly quoted on the Nasdaq National Market.

DEFENDANTS' ILLEGAL CONDUCT

A. Philip Evans Learned of Material Nonpublic Information through His Employment

11. Since July 1999, Philip Evans has worked in the finance department of Merix where he has been responsible for financial planning, budgeting and forecasting. In July 1999, Philip Evans reviewed, signed and agreed to comply with Merix's Insider Trading Policy, which sets forth certain periods during which employees were allowed to buy or sell Merix securities (a

“trading window”), mandates that certain employees (including Philip Evans) receive “pre-clearance,” or permission from the Company, prior to buying or selling Merix securities, and expressly forbids employees from “short selling” Merix stock or misusing material nonpublic information.

12. On the morning of May 4, 2004, Philip Evans received an e-mail from his supervisor stating the Company would “likely be issuing an update to earnings guidance for Q4 sometime next week.” Because he felt the information contained in the e-mail was sensitive and confidential, Philip Evans’ supervisor wrote at the top of the e-mail in all capital letters, bolded and underlined: “**THIS NOTE IS CONFIDENTIAL – DO NOT DISCUSS w/OR DISTRIBUTE [sic] TO ANYONE OUTSIDE OF THIS DISTRIBUTION LIST.**”

13. Later that day, Philip Evans attended a regularly scheduled staff meeting with his supervisor during which they discussed the topic of the confidential e-mail: Merix’s expected public announcement during the week of May 10 that the Company would report disappointing financial results. During that meeting, Philip Evans and other members of Merix’s finance group discussed that the Company was not going to meet the earnings projections that it had previously predicted. The information discussed at the meeting was highly confidential, since, among other things, such news would likely have a significant negative effect of Merix’s stock price.

B. Philip Evans Traded Merix Based on Material Nonpublic Information He Learned through His Employment

14. On the morning of May 5, 2004, Philip Evans sold 1,450 shares of Merix (all the Merix stock that he owned) at \$16 per share based on the material nonpublic information about Merix’s upcoming announcement. This trade was made in violation of Merix’s Insider Trading Policy for several reasons. Besides the fact that Philip Evans was in possession of material nonpublic information when he sold his stock since he knew that the Company would report disappointing financial results the following week before it was publicly announced, Philip Evans sold his stock during a “black-out period” – a period during which he was not supposed to

be buying or selling Merix securities. Also, Philip Evans did not “pre-clear” or receive permission from officials at Merix to trade Merix stock.

15. To further capitalize on the material nonpublic information about Merix’s upcoming announcement, on May 10 and 11, 2004, Philip Evans “sold short” 4,000 shares of Merix in a separate brokerage account he maintained in the name of his fiancée. In addition to trading during a “black-out period” and failing to “pre-clear” his trades, this trade was also in violation of Merix’s Insider Trading Policy because employees of Merix are not allowed to “short” Merix stock. Selling a stock short means selling a stock one doesn’t own with the expectation that the stock price will go down.

C. Philip Evans Tipped His Brother, Paul Evans, Who Traded Based on the Material Nonpublic Information Philip Learned through His Employment at Merix

16. On the evening of May 4, 2004, after learning at work that Merix would likely issue negative earnings news the next week, Philip Evans placed two phone calls to his brother’s home telephone (one for 6 minutes and one for 9 minutes). During those calls, Philip Evans told Paul Evans what he learned at work that day: that Merix would be announcing negative news regarding earnings during the next week.

17. The next morning, based on the information from his brother, Paul Evans began trading in Merix in anticipation of the Company announcing bad news the next week. Paul Evans bought 77 Merix put option contracts that expired on May 22 and shorted 14,000 shares (over \$230,000 worth) of Merix stock. By “shorting” shares in Merix, Paul Evans was trading based on the expectation that Merix’s stock price would go down; similarly, by purchasing hundreds of “put option contracts” that expired on May 22, Paul Evans was trading based on the expectation that Merix would go down in price before May 22.

18. Paul Evans continued shorting Merix stock and buying Merix put options through May 13, 2004, the day the negative news was announced after the market closed. He shorted Merix stock or bought put option contracts in Merix on every trading day between and including May 5 after he talked to his brother and learned about the announcement and May 13 when the

Company announced the negative news. He ultimately accumulated 477 Merix put option contracts and shorted 27,000 shares of Merix (over \$445,000 worth).

D. Paul Evans Tipped His Friend Who Traded Based on the Material Nonpublic Information Philip Learned through His Employment at Merix

19. On May 5, 2004 at 10:05 p.m., Paul Evans made a two-minute phone call to his friend Paul Westley in which he told Westley what he learned from Philip: that Merix would be issuing negative news the next week. The next day, Westley bought 40 Merix put option contracts. This was the first time Westley had traded in Merix securities.

E. Philip Evans Tipped His Mother Who Sold Merix Based on the Material Nonpublic Information He Learned through His Employment at Merix

20. In May 2004, Philip Evans told his mother, Carolyn Evans Orcutt, that he was planning on selling all his Merix stock and that she should also sell all her Merix stock. Philip Evans told his mother to sell based on the fact that he knew that Merix was not going to meet the earnings projections that had previously been predicted by the Company. On May 11, Orcutt sold all the Merix stock she owned (500 shares). She instructed her husband (Philip Evans' stepfather) to sell all his Merix stock (200 shares), which he did that same day.

F. Merix Stock Price Dropped in Reaction to News That Company Will Miss Earnings Guidance

21. After the close of the market on May 13, 2004, Merix publicly announced that it was not going to meet the earnings projections that had previously been predicted by the Company. In reaction to the news, Merix's stock price which had closed on May 13 at \$15.32 per share, opened on May 14 at \$9.55 per share and closed at \$10.68 per share (down 30 percent from the prior day's close).

22. Because the news was significant, the trading volume (the number of shares bought and sold) of Merix stock increased substantially. On May 14 (the first day of trading after the news was announced), the trading volume was over 62 times the trading volume of the previous day.

23. By selling and “shorting” Merix stock based on material nonpublic information, Philip Evans profited and avoided losses of over \$30,000 in accounts that he controlled. Also, by advising his mother to sell all her shares of Merix stock based on material nonpublic information, Philip Evans’s mother and stepfather avoided losses of over \$3,000.

24. By “shorting” Merix stock and purchasing Merix put options based on material nonpublic information, Paul Evans made over \$400,000 in illegal profits. By advising his friend to buy short-term put options based on material nonpublic information, Paul Evans’s friend, Paul Westley, profited approximately \$14,000.

25. Philip Evans had a fiduciary duty to Merix and its securities holders not to trade in Merix securities, either directly or indirectly, based on material nonpublic information concerning the Company. Philip Evans breached that duty when he sold all his Merix shares and when he “shorted” Merix stock in his fiancée’s brokerage account based on material nonpublic information concerning Merix’s upcoming, lower than expected fourth-quarter earnings announcement. Philip Evans also breached that duty when he disclosed material nonpublic information about Merix to his brother, Paul Evans, and to his mother Carolyn Evans Orcutt. By reason of their familial relationship, Philip Evans obtained a personal benefit by disclosing this information to his brother and mother so that they could trade.

26. Paul Evans knew or was reckless in not knowing that Philip Evans was acting in breach of his fiduciary duty to Merix and its securities holders by disclosing to Paul Evans nonpublic information about Merix. At the time Paul Evans advised his friend to buy short-term put options in Merix, Paul Evans knew or was reckless in not knowing that Philip Evans was acting in breach of his fiduciary duty to Merix and its securities holders by disclosing material nonpublic information about Merix.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act
[15 U.S.C. § 77q(a)]
(Fraud in the Offer or Sale of Securities/Insider Trading)

27. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.

28. Defendants Philip Evans and Paul Evans, with scienter, directly or indirectly:
- a) employed devices, schemes, or artifices to defraud;
 - b) obtained money or property by means of untrue statements of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser

in connection with the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails.

29. By reason of the foregoing, Defendants Philip Evans and Paul Evans violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5]
Promulgated Thereunder

(Fraud in Connection with the Purchase or Sale of Securities/Insider Trading)

30. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.
31. Defendants Philip Evans and Paul Evans, with scienter, directly or indirectly:
- a) employed devices, schemes, or artifices to defraud;
 - b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which 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 other persons

in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange.

32. By reason of the foregoing, Defendants Philip Evans and Paul Evans violated, and unless restrained and 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 requests that this Court:

I.

Permanently enjoin Defendants Philip Evans and Paul Evans from directly or indirectly violating 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 [17 C.F.R. § 240.10b-5] thereunder;

II.

Order Defendants to disgorge the illegal trading profits and losses avoided from their own trades and those of the persons who traded based on their revealing material nonpublic information as alleged in this Complaint, plus prejudgment interest;

III.

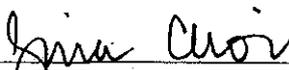
Order Defendants each to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,

Dated: July 26, 2005



Jina L. Choi
New York State Bar No. 2699718
(415) 705-2500
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION