SEC, FINRA Enforcement: Ex-Marine Charged With Bilking Fellow Service members

By Marlene Y. Satter, ThinkAdvisor | August 8, 2013

Among recent enforcement actions by FINRA and the SEC were a $1.4 million fine for Oppenheimer & Co. for violations that included the unregistered sale of penny stocks and an inadequate anti-money laundering (AML) program; charges against a purported biofuel company and a dozen people involved in a pump-and-dump scheme; charges against a former employee of Green Mountain Coffee and his friend for insider trading; and charges against a former Marine who played on his veteran status to bilk fellow veterans and active-duty service members, as well as civilian investors, in a hedge fund investment scheme.

SEC Charges Ex-Marine With Bilking Fellow Vets, Service members, Civilians

Former Marine Clayton Cohn and his hedge fund management firm, Market Action Advisors, were charged by the SEC, after Cohn masqueraded as a successful trader to defraud fellow veterans, current service members and other investors.

Cohn raised nearly $1.8 million from investors through a hedge fund he managed after lying to investors about his success as a trader, the performance of the hedge fund, his use of investor proceeds and his personal stake in the fund.

He solicited friends, family members and fellow veterans to invest in his hedge fund, and played on his military background to do so. One way he did that was by controlling a so-called charity called the Veterans Financial Education Network (VFEN) that supposedly teaches vets how to understand and manage their money. VFEN press releases boast of Cohn's Marine Corps background, urging veterans to find "a money-manager who is both trustworthy and knows what he is doing." VFEN's website identifies Cohn as a money manager who "manages millions of dollars."

Not true. While Cohn told his targets, mostly unsophisticated investors, that he had invested $1.5 million of his own money in his hedge fund and that an accounting firm would audit the fund's financial statements, the truth was that, not only did he only invest around $4,000 of his own money in the fund, but of all the investor money he brought in, less than half was ever actually invested. Instead, he spent a good chunk of it. Not only that, the firm he named never agreed to do the audit.

More than $400,000 was squandered on such personal expenses as a Hollywood mansion, a luxury car and extravagant tabs at high-end nightclubs—all calculated to make him look like a successful trader and investor. But of the money he did invest in the hedge fund, nearly all was lost. To cover up the fraud and keep the money coming in from investors, Cohn generated phony statements that showed annual returns of more than 200%.

The SEC was granted emergency relief, including a temporary restraining order and asset freeze, and seeks permanent injunctions, disgorgement of ill-gotten gains and financial penalties from Cohn and Market Action Advisors.

Penny Stock Sales, AML Failures Get Oppenheimer a $1.4M FINRA Fine

FINRA fined Oppenheimer & Co. $1,425,000 for the sale of unregistered penny stock shares, and for failure to have an adequate anti-money laundering compliance program to detect and report suspicious penny stock transactions.

Charges were first brought against the firm, which is not affiliated with Oppenheimer Funds, in a May FINRA complaint. The firm permitted customers who had only recently opened accounts to deposit large blocks of penny stocks, which were then sold and the proceeds transferred elsewhere.

Other circumstances surrounding the sales should have raised red flags, according to FINRA, but the agency determined that Oppenheimer's systems and procedures governing penny stock transactions were inadequate and unable to determine whether stocks were restricted or freely tradable. A lack of adequate supervisory reviews meant that Oppenheimer also failed to determine whether the securities were registered. FINRA also determined that there were additional failures.

This is the second time Oppenheimer has been found to have violated AML obligations. In addition to the fine, the firm is also required to retain an independent consultant to review its penny stock and AML policies, systems and procedures. Oppenheimer agreed to the sanctions without admitting or denying the charges.

SEC Files Charges in $4.4 Million Pump-and-Dump Scheme

A dozen individuals and the company they promoted, Zenergy International, were charged by the SEC in a multimillion-dollar pump-and-dump scheme. In addition, the SEC announced a trading suspension in the stock of the company.

According to the SEC, Bosko Gasich, a founder and principal shareholder of Zenergy, a purported biofuel company, caused Zenergy to enter into a reverse merger with a publicly traded shell entity called Paradigm Tactical Products. Gasich used backdated convertible debt to bring about the issue by Paradigm of 300 million shares of purportedly unrestricted stock that went to his family and friends, a lawyer who served as transaction counsel, stock promoters and associates of Paradigm.

Once the stock was issued, Gasich and Scott Wilding, who is already the subject of an SEC cease-and-desist order, got busy. They and several stock touters rolled out two promotional campaigns, complete with misleading press releases and financial disclosures, to create investor buzz in Zenergy so that they could dump the stock. The touters, naturally, did not disclose their compensation for promoting the company.

The phony disclosures and releases were reviewed and approved by Gasich and Robert Luiten, who was Zenergy's CEO, and attorney Diane Dalmy, who acted as counsel for the reverse merger. Dalmy issued opinion letters indicating that her and others' shares were unrestricted and freely tradable. Once the stock price rose, predictably, Gasich and the others dumped it on the public market to rake in the profits.

Altogether, the SEC charged Zenergy; Gasich, who lives in Chicago; Luiten, from Mobile, Ala.; Wilding and his company Skyline Capital, of Pembroke Pines, Fla., Dalmy, from Denver; Gasich's niece Diana Bozovic, of Evanston, Ill.; his sister, Javorka Gasic, also of Evanston; a former college roommate and close friend of Gasich, Nenad Jovanovich of Chicago; Gasich's former fiancée, Kymberly Nelson, who lived with him during the scheme; and promoters and touters Dale Baeten of Brillion, Wis.; Charles Bennett of Gainesville, Ga.; George Bowker III of New Milford, N.J.; and Ronald Martino of Cranston, R.I.
Baeten, Bennett, Bowker, Bozovic, Gasic, Jovanovich, Nelson and their associated entities agreed to settle the charges without admitting or denying the allegations.

Gasich neither admitted nor denied the charges, but agreed to a partial settlement that imposes disgorgement and penalties, a penny stock bar, an officer-and-director bar, and a permanent injunction from further violations of the charged provisions of the securities laws. The court will determine the amount of the disgorgement and prejudgment interest, to be paid jointly and severally by Gasich and his company Market Ideas, as well as financial penalties.

The case continues against Zenergy, Dalmy, Luiten, Martino and Wilding.

SEC Charges Former Green Mountain Coffee Exec with Insider Trading

Chad McGinness, a former systems administrator at Vermont-based Green Mountain Coffee Roasters, and his longtime friend and business associate Sergey Pugach were charged by the SEC with insider trading after McGinniss repeatedly obtained quarterly earnings data, traded in advance of its public release and shared the information with Pugach.

McGinness's job gave him access to folders on Green Mountain's computer system that contained drafts of press releases and earnings announcements, as well as to employee e-mail accounts. He acted on this to seek out information before announcements were made, and then shared what he found out with Pugach.

The SEC said that McGinnis's pattern was to buy Green Mountain Coffee securities, usually out-of-the-money options, just in advance of earnings announcements. Pugach, acting on the tips from McGinnis, would illegally trade in his own account and his mother's trading account. Between the two of them, McGinnis and Pugach raked in $7 million in illegal profits by correctly anticipating Green Mountain Coffee's stock price after 12 of the 13 quarterly earnings announcements since 2010.

The SEC filed charges along with a motion seeking a temporary restraining order, an asset freeze and other emergency relief. Pugach's mother, Bella Pugach, is named as a relief defendant for the purpose of recovering ill-gotten gains in her trading account.

The investigation is continuing.