JUDGE SAND

'08 CIV 10054

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ROBERT TODD BEARDSLEY AND GEORGE LINDENBERG, Defendants.	RECEIVED NOV 19 2008 U.S.D.C. S.D. N.Y. CASHIERS

COMPLAINT

The Securities and Exchange Commission (the "SEC" or "Commission") alleges as follows:

NATURE OF THE ACTION

1. This case involves a manipulative trading scheme carried out by Robert Todd Beardsley ("Beardsley") and George Lindenberg ("Lindenberg") through brokerage accounts in the names of nominees and an entity controlled by Beardsley. All of these accounts were held at the now defunct broker-dealer, Redwood Trading LLC ("Redwood"). Between October 2003 and September 2004, Beardsley and Lindenberg engaged in the manipulative trading of numerous securities listed on the New York Stock Exchange ("NYSE") by repeatedly executing short sales with the intent to artificially depress the price of those shares so that they could then cover their short positions at favorable prices. In furtherance of their scheme, Beardsley and Lindenberg routinely executed short sales while the stock price was declining, in violation of an SEC rule that was in effect at that time. Beardsley and Lindenberg also failed to mark their orders as

short sales in order to create the false appearance that their orders were long sales. As a result of their deception, these illegal short sale orders were routinely executed on the NYSE. The Defendants' scheme was highly profitable, yielding approximately $2,400,000 in illicit gains in less than a year.

2. To conceal their involvement in the illegal scheme, Beardsley and Lindenberg traded through Redwood accounts in the name of two nominees. Beardsley and Lindenberg placed thousands of trades through these accounts to carry out their strategy of driving down the price of a stock by rapidly executing illegal short sales in a given stock within a matter of minutes. By successively selling shares of stock at lower prices, Beardsley and Lindenberg also intended to induce others to sell in order to further depress the price of the stock. Beardsley and Lindenberg then took advantage of the downward price movement by buying shares of the stock at the artificially depressed price to cover their illegal short sales.

3. Beardsley and Lindenberg were able to execute these illegal trades in the Redwood accounts because Beardsley had convinced Redwood's then-Chief Executive Officer ("CEO") who was also the registered representative on these accounts, to disable the function of Redwood's trading software that was programmed to prevent illegal short selling. As a result, when Beardsley and Lindenberg entered their illegal short sales, the trading software did not block the trades, as it was designed to do, and instead submitted them for execution on the NYSE.

4. By their directed and continuous execution of thousands of illegal short sales in numerous securities, with the intent to depress the price of those stocks, Beardsley and Lindenberg violated Sections 17(a) of the Securities Act of 1933 (the

"Securities Act") [15 U.S.C. § 77q(a)], Sections 9(a)(2), 10(a)(1), and 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § § 78i(a)(2), 78j(a)(1) and 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] and former Exchange Act Rule 10a-1 [17 C.F.R. § 240.10a-1] thereunder. Unless enjoined, defendants Beardsley and Lindenberg will likely engage in such conduct and commit such violations (except for violations of former Rule 10a-1, which has been rescinded) in the future. Accordingly, the Defendants should be enjoined from violating these provisions and rules, except former Rule 10a-1, ordered to disgorge any ill-gotten gains or benefits derived as a result of their violations, as well as prejudgment interest thereon, and ordered to pay appropriate civil money penalties.

JURISDICTION AND VENUE

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

6. Venue is proper in this district 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 certain acts and transactions constituting the violations occurred in this district.

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

DEFENDANTS

8. Defendant Beardsley is 45 years old and currently resides in Atherton, California. Beardsley appeared for sworn testimony before the SEC staff on June 29, 2005, and asserted his privilege against self-incrimination in response to all substantive questions. Beardsley is currently employed as a real estate agent in California.

9. Defendant Lindenberg is 37 years old and currently resides in Austin, Texas. Lindenberg is currently employed as a commercial landscaper. In 2001, Lindenberg met Beardsley at a training program for day traders.

RELEVANT ENTITY

10. During the relevant period, Redwood had its headquarters in San Francisco, California and was registered with the Commission as a broker-dealer. Redwood ceased operations on December 31, 2004. In January 2005, Redwood filed a Form BDW to withdraw its registration as a broker-dealer. In March 2005, the SEC terminated Redwood's registration as a broker-dealer.

FACTUAL ALLEGATIONS

Background

11. During the relevant period, Section 10(a)(1) of the Exchange Act and former Rule 10a-1 thereunder provided that, subject to narrow exemptions, none of which were applicable to defendants' conduct alleged herein, a listed security could not be sold short on "minus-ticks" or "zero-minus-ticks." A "minus-tick" refers to a price below the immediately preceding sale price for that security. A "zero-minus-tick" refers to a price which is the same as the immediately preceding sale price for that security, but which is less than the most immediate different preceding sale price. In this Complaint, the terms

"minus tick" and "zero-minus-tick" will be collectively referred to as a "down-tick." Rule 10a-1 was rescinded by the Commission in July 2007.

12. During the relevant period, Exchange Act Rule 3b-3 defined a "short sale" as any sale of a security which the seller does not own, and further states that "a person shall be deemed to own securities only to the extent that he has a net long position in such securities."

Beardsley Engaged in Illegal Short Selling through Redwood Accounts

13. In December 2002, Beardsley opened a day-trading account at Redwood in the name of Redstar Capital ("Redstar"), a company he owned and controlled.

14. From December 2002 through September 2004, Beardsley traded stocks in his Redwood accounts, including the Redstar and nominee accounts, from one or more computers in his house, by using trading-software that Redwood provided to him and other customers.

15. Less than a year later, on or about the fall of 2003, Beardsley called Redwood's CEO, to complain about the buying power limitations in the Redstar account. The CEO identified a back-office software function called "Ignore Buying Power Limits," which he enabled at that time. During this same call, the CEO also identified to Beardsley another trading software function called, "Ignore Trading Rules." Although this function did not relate to Beardsley's complaint about buying power, Beardsley asked the CEO to enable it as well. The CEO then enabled the "Ignore Trading Rules" function. By enabling the Ignore Trading Rules function, the CEO disabled the software's ability to block short selling of stocks on down-ticks.

16. Almost immediately, Beardsley realized that he could execute short sales of stock on down-ticks through his Redwood account, in contravention of the then-existing short sale rules. Beardsley then began to execute illegal short sales through his Redstar account at Redwood.

17. All of the illegal trades in the Redstar account were executed on the NYSE. To ensure that the illegal short sales would be executed by the NYSE, Beardsley failed to mark his orders as short sales, creating the false appearance that his orders were long sales. Consequently, these short sale orders were routinely executed on down-ticks through the NYSE.

<u>Beardsley Opens Additional Redwood Accounts in the Name of Two Nominees</u>

18. To capitalize on his ability to violate the short selling rules and to mask his role in the illegal trading scheme, Beardsley utilized the identities of two foreign individuals to open additional Redwood accounts. Specifically, on or about December 2003, Beardsley opened these accounts at Redwood in the name of two nominees, who were purportedly Russian citizens, to make it appear as if the accounts were not owned and controlled by him. (These Redwood accounts will collectively be referred to as the "Nominee Accounts.")

19. On behalf of Beardsley, Redwood's CEO set up theses accounts with the same capabilities as the Redstar account, including enabling the "Ignore Trading Rules" function. Accordingly, Beardsley was able to execute short sales on down-ticks in these accounts, as well.

20. At Beardsley's instruction, domestic and foreign bank accounts in the name of one of the nominees were also opened, using a copy of what appears to be a

Russian passport for that nominee. In addition, at Beardsley's direction, post-office boxes and email accounts were also opened in the names of these nominees.

21. During the relevant period, Beardsley used an email address in the name of one of the nominees to send instructions to Redwood to wire funds -- the profits from the illegal scheme – from the Nominee Accounts to the domestic and foreign bank accounts that he had established in name of one of the nominees. To access these funds, Beardsley either had other people, including his wife, cash checks from the domestic nominee bank account or he used an off-shore bank account to receive wire transfers from the Nominee Accounts and then had that money wired back to him in the United States.

Beardsley and Lindenberg Carry-out Their Manipulative Trading Scheme

22. On or about December 2003, Beardsley invited Lindenberg to trade with him in the Nominee Accounts. Lindenberg and Beardsley illegally traded stocks in the Nominee Accounts from two different locations -- Beardsley from his home in California and Lindenberg from his home in Texas -- accessing the accounts through log-in passwords provided by Redwood. Together, Beardsley and Lindenberg executed hundreds of thousands of illegal short sales in the Nominee Accounts between December 2003 and September 2004.

23. All of the illegal trading in the Nominee Accounts was executed pursuant to a short selling scheme that was designed to drive down the price of a stock by repeatedly selling shares short on a down-tick, an illegal practice at the time, and then covering their short position at the artificially depressed price. The profit from the

scheme was the difference between the prices at which they sold the shares short and the price at which they covered their short positions.

24. In order to successfully carry out their scheme, Beardsley and Lindenberg used a computer program to identify stocks that they believed they could profitably sell short on down-ticks. Using the computer program, Beardsley and Lindenberg looked for stocks where a large market sell order was waiting to be executed, which they surmised was a short sale order that was waiting to be executed because of the down-tick rule (in other words, a short sale order that had been placed by a short seller who, unlike Beardsley and Lindenberg, was complying with the then-existing short sale rules).

25. By employing their scheme under circumstances where it was likely that a large short sale order was awaiting execution, Beardsley and Lindenberg took advantage of the fact that they could drive down the price of the security through successive, illegal short selling, and then cover their short position at a favorable price by buying shares from the short seller with the pending sale order.

26. After identifying a stock that they wanted to trade, Beardsley and Lindenberg short sold thousands of shares of the stock on the down-tick within a matter of seconds or minutes with the intent to drive down the price of the stock both by their own trading and by inducing others to sell their shares. Once the price of a stock declined, Beardsley and Lindenberg usually bought shares at the price immediately above the last reported price, *i.e.*, on an up-tick (at a higher price than the last executed trade). By doing so, Beardsley and Lindenberg enabled the waiting short seller to sell shares of the stock (as there was no longer a down-tick in the stock), and in turn, they bought shares from that short seller to cover their short position at a favorable price.

27. For example, on March 25, 2004, pursuant to their scheme, Beardsley and Lindenberg short sold a total of 16,485 shares of Tesoro Corporation at declining prices as follows: at 11:07:57 a.m., Beardsley and Lindenberg sold short 399 shares of the stock at $17.82 per share; and between 11:07:57 a.m. and 11:09:38 a.m., they successively sold short an additional 16,086 shares on down-ticks at prices ranging from $17.81 to $17.51. None of these short sell orders was properly marked as a short sale. In order to cover their short position, Beardsley and Lindenberg then bought 16,485 shares of the stock on an up-tick at $17.52 at 11:09:45 a.m., one cent higher than their last sale. As a result, in a matter of two minutes, they profited from this trading by approximately $2,000.

28. All of the illegal trades in the Nominee Accounts were executed on the NYSE. To ensure that the illegal short sales would be executed by the NYSE, Beardsley and Lindenberg failed to mark their orders as short sales, creating the false appearance that their orders were long sales. As a result of their deception, these illegal short sale orders were routinely executed on down-ticks through the NYSE.

29. Beardsley and Lindenberg successfully employed their short selling scheme with respect to numerous NYSE-listed securities including, among others, the securities of Citizens Communications Co., Tesoro Petroleum, Astoria Financial Corporation, Comerica Inc., LaBranche & Co., Inc., Sears Roebuck Co., The Yankee Candle Co., Dr. Reddy's Laboratories ADS, BJ's Wholesale Club, Annaly Mortgage Mgmt., Inc., and Medtronic Inc.

30. Although their profit for each of their illegal, trading sequences was relatively small, in a typical trading day, Beardsley and Lindenberg executed dozens of such trading sequences, resulting in illicit trading profits of approximately $2,400,000.

FIRST CLAIM FOR RELIEF

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

31. Paragraphs 1 through 30 are re-alleged and incorporated herein by reference.

32. By reason of the foregoing, Defendants directly or indirectly, knowingly or recklessly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities: (a) employed a device, scheme, or artifice to defraud; (b) obtained money or property by means of any untrue statements of a material fact or any omission 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; or (c) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchaser.

33. By engaging in the above conduct, Defendants violated 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 Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

34. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. By reason of the foregoing, Defendants directly or indirectly, knowingly or recklessly, by 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 purchase or sale of a security: (a) employed a device, scheme, or artifice to defraud; (b) made untrue statements of a 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; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons.

36. By engaging in the above-conduct, Defendants violated 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].

THIRD CLAIM FOR RELIEF

Violations of Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)]

37. Paragraphs 1 through 36 are re-alleged and incorporated herein by reference.

38. By reason of the foregoing, Defendants directly or indirectly, effected, alone or with one or more other persons, a series of transactions in securities registered on a national securities exchange, creating actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others.

39. By engaging in the above-conduct, Defendants violated Section 9(a)(2) of the Exchange Act [15 U.S.C § 78i(a)(2)].

FOURTH CLAIM FOR RELIEF

Violations of Section 10(a)(1) of the Exchange Act [15 U.S.C. § 78j(a)(1)], and Exchange Act Former Rule 10a-1 [17 C.F.R. § 240.10a-1]

40. Paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

41. At the time of the alleged conduct, Section 10(a)(1) of the Exchange Act and Rule 10a-1 thereunder provided that, subject to narrow exemptions, not applicable here, a listed security could not be sold short (i) at a price below the immediately preceding sale price for that security, or (ii) at a price which is the same as the immediately preceding sale price for that security, but which is less than the most immediate different preceding sale price. None of the exemptions that were provided for under the rule were applicable to defendants' short selling during the relevant period, as alleged herein.

42. By engaging in the above-conduct, Defendants violated Section 10(a)(1) of the Exchange Act [15 U.S.C. § 78j(a)(1)], and former Rule 10a-1 [17 C.F.R. § 240.10a-1] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter judgment:

(a) permanently enjoining defendants Beardsley and Lindenberg from violating Section 17(a) of the Securities Act, and Sections 9(a), 10(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder;

(b) ordering defendants Beardsley and Lindenberg to disgorge all profits from their illegal conduct, jointly and severally, together with prejudgment interest;

(c) ordering defendants Beardsley and Lindenberg to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 20(d) of the Securities Act [15 U.S. C. § 77t(d)].

(d) providing such other relief as may be appropriate.

Dated: 1/19/08

Respectfully submitted,

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