

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

SANG N. PHAN and RICH N. PHAN,

Defendants.

Case File No: _____

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff, Securities and Exchange Commission (“Commission”), files this Complaint and alleges the following:

SUMMARY

1. This matter concerns a “free-riding” scheme perpetrated by Columbus, Georgia based residents and brothers, Sang N. Phan (“Sang Phan”) and Rich N. Phan (“Rich Phan”) (collectively, the “Phans” or the “Defendants”), that resulted in net losses of at least \$12,830.36 to two registered broker-dealers.

2. “Free-riding,” in this matter, describes the fraudulent practice used by securities traders who seek to exploit the “instant deposit” credit extended by certain broker-dealers in advance of incoming fund deposits.

3. By depositing funds into their brokerage accounts from bank accounts that they know lack sufficient funds, these traders use the “instant deposit” credit extended by the broker-

dealers to buy and sell securities, hoping to earn and withdraw trading profits before the broker-dealer is notified of the insufficient funds and freezes the account.

4. Specifically, between February 2021 and early May 2021 (the “Relevant Period”), Sang Phan and Rich Phan engaged in a free-riding scheme involving four brokerage accounts—three at Broker A and one at Broker B—each of which they opened using account applications that falsely inflated the net worth of the account holder.

5. Sang Phan opened three of these accounts through the internet—two in his own name and one in the name of his girlfriend—and Rich Phan, working with Sang Phan, opened one of these accounts online in his name.

6. Over the Relevant Period, acting individually or in concert, the Phans made eight separate bogus fund deposits over the internet into these accounts totaling \$222,699.99 from bank accounts which they knew, or recklessly disregarded knowing, held insufficient fund balances to cover the transfers.

7. Using the resulting instant deposit credit provided by Broker A or Broker B, Sang Phan used the online platforms of Broker A and Broker B, respectively, to purchase a total of at least \$59,723.47 in biotechnology company stocks, hoping to profit from the ongoing coronavirus pandemic.

8. The Phans also made at least \$30,828 in securities purchases in Rich Phan’s online account which Broker A reversed before any profit or loss was incurred after the firm detected the free-riding and linked the multiple accounts being used by the Phans.

9. None of the Phans’ trading was profitable.

10. After the bogus fund transfers reversed and the broker-dealers froze and liquidated the securities holdings in Sang Phan's accounts, the firms were left with net losses of \$12,830.36—an amount that Sang Phan has not satisfied to date.

VIOLATIONS

11. Defendants Phans, by virtue of their conduct, directly or indirectly, have engaged in violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

12. The Commission seeks against each defendant: (i) permanent injunctive relief (that includes a narrower hybrid antifraud injunction consistent with the Eleventh Circuit's decision in *SEC v. Goble*, 682 F.3d 934 (11th Cir. 2012)); (ii) conduct-based injunctions from: (a) directly or indirectly, trading securities in any brokerage account he owns, controls, or has access to that does not have settled cash equal to or greater than the amount of the securities trade(s); and (b) opening a brokerage account without first providing to the relevant brokerage firm(s) a copy of the Commission's filed complaint in this matter and any judgment that the Commission may obtain against him in this matter; and (iii) civil penalties. In addition against Sang Phan, the Commission seeks disgorgement of ill-gotten gains and prejudgment interest thereon.

JURISDICTION AND VENUE

13. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)] to enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object,

for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

14. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

15. The Defendants, directly and indirectly, have made use of the mails, the means and instrumentalities of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

16. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because both defendants reside within the Middle District of Georgia; and certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act have occurred within the Middle District of Georgia.

THE DEFENDANTS

17. **Sang Ngoc Phan** (“Sang Phan”), age 31 and a resident of Columbus, Georgia, is a former nail salon worker whose current occupation is unknown.

18. **Rich Nguyen Phan** (“Rich Phan”), age 27 and a resident of Columbus, Georgia is a former restaurant and nail salon worker whose current occupation is unknown. Rich Phan, a younger brother of Sang Phan, has a criminal record involving convictions for shoplifting, drug possession and forgery.

FACTS

A. Misconduct at Broker A

1. Sang Phan

19. On February 11, 2021, Sang Phan applied for a brokerage account at Broker A by submitting an online application in which he falsely inflated his personal assets, claiming he had a net worth between \$50,000 and \$99,999, when he knew he had no such net worth.

20. Sang Phan lied in his online application to Broker A, by overstating his personal wealth because his initial application for a brokerage account had previously been rejected when he accurately reported his minimal assets of approximately \$1,000.

21. Once his account was open at Broker A, Sang Phan established an internet link between his brokerage account and his bank account in his name at his banking institution, which held only \$989.44 at the time of his brokerage account application.

22. Sang Phan acquired that bank balance as income in February 2021 from a pandemic-related unemployment program.

23. Roughly three weeks later, on March 3, 2021, Sang Phan initiated four fake online deposits totaling \$72,000 from his bank account into his brokerage account at Broker A and used the instant deposit credit granted by Broker A to purchase \$58,315.65 of common stock of Ocugen, Inc. (ticker: "OCGN"), a biotechnology company which he understood was working on vaccines.

24. Sang Phan made the four deposits to his brokerage account at Broker A all the while knowing that he was without funds in his bank account to cover the transactions.

25. Sang Phan knew his bank account had insufficient funds to cover the four deposits when he initiated the online transactions, and, in fact, the balance of his bank account was only \$1,074.74 when the transactions were initiated on the Broker A platform.

26. Sang Phan's goal in this scheme was to initiate bogus electronic fund transfer ("EFT") deposits and use the instant deposit credit granted by Broker A to trade in biotechnology-related securities which he believed would allow him to profit from the coronavirus pandemic. Sang Phan hoped to pull off the scheme by pulling out profits from his brokerage account before the bank deposits were reversed for insufficient funds and before Broker A froze his account at the broker-dealer.

27. However, Sang Phan's trading was not profitable.

28. On March 5, 2021, each of the bogus deposits that Sang Phan initiated two days earlier reversed due to insufficient funds in his bank account.

29. Thereafter, Broker A froze Sang Phan's account and a few days later liquidated his holdings, leaving his account with trading losses and a negative balance totaling \$12,670.27, including \$140.81 in unpaid fees, which remain outstanding.

2. Rich Phan

30. Sang Phan was joined in his efforts by his younger brother, Rich Phan, and together they continued the free-riding scheme.

31. Specifically, sitting at a table at Rich Phan's home, Sang Phan worked with his brother at his side to open a brokerage account online at Broker A in Rich Phan's name on March 3, 2021—the same day that Sang Phan was free-riding in his own brokerage account at Broker A.

32. Rich Phan knowingly provided his Social Security number and phone number for the account application and electronically signed the online application himself when completed, while Sang Phan entered fraudulent financial information, falsely claiming that Rich Phan had both an annual income and a net worth between \$50,000 and \$99,999.

33. Sang Phan knew that, in reality, his brother Rich Phan had no meaningful savings.

34. Sang Phan worked with his brother to establish an online link between the new brokerage account at Broker A and Rich Phan's own personal bank account at his banking institution.

35. Sang Phan and/or Rich Phan actually set up Rich Phan's bank account link online and once the account was open, Rich Phan knowingly gave Sang Phan permission to make bogus deposits in Rich Phan's brokerage account at Broker A to obtain instant deposit credit in order to free-ride.

36. Sang Phan and Rich Phan jointly sat together at a table while Sang Phan entered transactions into a computer, which initiated unfunded deposits totaling \$50,000 into Rich Phan's brokerage account at Broker A on March 4, 2021.

37. At the time of these deposits, the Phans understood the deposits would not process because Rich Phan's bank account had a balance of only \$791.85.

38. The Phans then used Rich Phan's brokerage account at Broker A to make \$18,423 in purchases of Severn Bancorp Inc. (ticker "SVBI"), a Maryland-based savings and loan company, as well as \$12,405 in purchases of GameStop Corporation (ticker "GME"), a Texas-based retail video gaming store, all of which were filled on the secondary market. However, Broker A quickly rejected and cancelled the SVBI and GME purchases on or around March 4, 2021, and closed Rich Phan's account before any profit or loss was incurred on the trades.

Broker A reversed the purchases after having linked Rich Phan's account to Sang Phan's account, and after confirming that Rich Phan had not paid for the securities purchases.

39. Specifically, an internal fraud detection unit at Broker A connected the Phan brothers' accounts because each had listed the address of a local relative as the brokerage account mailing address.

3. Trading in the Account of Sang Phan's Girlfriend

40. Also on March 4, 2021, Sang Phan completed an online account application for a brokerage account at Broker A in the name of his then girlfriend.

41. Rather than using the feminine, Sang Phan used the actual name of his girlfriend, preceded by "Mr." on the application.

42. Sang Phan provided further false information about his girlfriend on the application, by falsely claiming that she had both an annual income and a net worth between \$50,000 and \$99,999. Sang Phan knew at the time he included this false information on the brokerage account application that they were not true.

43. In reality, Sang Phan's then girlfriend did not then have any savings, did not have a bank account, and was only working part-time occasional jobs.

44. Sang Phan linked his girlfriend's new brokerage account at Broker A to his own bank account and, on March 5, 2021, initiated a \$99,999.99 online deposit into his girlfriend's brokerage account. At the time of this deposit, however, Sang Phan's bank account had a balance of only \$170.56.

45. Sang Phan made the bogus EFT into his girlfriend's brokerage account because he was again trying to trade using fraudulently obtained instant deposit credit so that he could attempt to withdraw profits before the deposits reversed for insufficient funds.

46. His girlfriend's brokerage account was used to place purchase orders through Broker A's online platform of OCGN, GME and Jaguar Health, Inc. (ticker: "JAGX"), a pharmaceutical company that focuses on "discovering, developing and commercializing plant-based prescription medicines for urgent global health needs," according to the company's website.

47. However, Broker A rejected and cancelled the orders and closed the account after linking the girlfriend's brokerage account to Sang Phan's bank account at Broker A.

B. Misconduct at Broker B

48. A few months later in 2021, Sang Phan engaged in more free-riding in a brokerage account in his name at Broker B.

49. Similar to his conduct at Broker A, Sang Phan initially provided Broker B with an online account application containing false financial information.

50. Specifically, Sang Phan's account application submitted to Broker B on December 29, 2020, listed his total net worth as being between \$50,001 and \$100,000.

51. However, Sang Phan's bank account balance on December 29, 2020, was only \$130.

52. The following year, but some months after Sang Phan's free-riding at Broker A, on May 4, 2021, Sang Phan initiated a \$700 online deposit from his bank account into his brokerage account at Broker B. However, his bank account balance was then only \$37.78.

53. Before the deposit reversed for insufficient funds, Sang Phan made \$1,407.82 in buys and \$1,272.45 in sells using Broker B's online platform in the stocks of OCGN, as well as another biotechnology company called Cocystal Pharma, Inc. (ticker "COCP"), which purportedly at that time was developing novel antiviral therapeutics targeting coronaviruses.

54. After the false deposit was reversed, his account at Broker B was left with trading losses and a negative balance of -\$160.09, including \$30 in reversal fees.

55. The following chart summarizes the activity in the brokerage accounts of Sang Phan, Rich Phan, and Sang Phan's girlfriend:

<u>Time Period</u>	<u>Broker-Dealer</u>	<u>Account Name</u>	<u>Total EFTs Rejected for NSF</u>	<u>Bank Balance at Time of EFTs</u>	<u>Security Purchases After EFTs</u>	<u>Trading Gain/(Loss and Unpaid Fees)</u>
Mar. 2022	Broker A	Sang Phan	\$72,000	\$1,074.74	\$58,315.65	(\$12,670.27)
Mar. 2022	Broker A	Rich Phan	\$50,000	\$791.85	\$30,828*	*None/Trades All Reversed
Mar. 2022	Broker A	Girlfriend	\$99,999.99	\$170.56* (*linked to Sang Phan's bank account)	\$0**	**None/Trades All Reversed
May 2020	Broker B	Sang Phan	\$700	\$37.78	\$1,407.82	(\$160.09)

COUNT I—FRAUD BY DEFENDANTS PHANS
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]

56. Paragraphs 1 through 55 are hereby realleged and are incorporated herein by reference.

57. From at least February 2021 through at least May 2021, Defendants Phans, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and 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

c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

58. The Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

59. By reason of the foregoing, Defendants Phans, directly and indirectly, have 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].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants named herein committed the violations alleged herein.

II.

Issue permanent injunctions enjoining Defendants Sang Phan and Rich Phan, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them from violating 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].

III.

Issue an order that permanently enjoins Defendants Sang Phan and Rich Phan each from: (a) directly or indirectly, trading securities in any brokerage account he owns, controls, or has access to that does not have settled cash equal to or greater than the amount of the securities trade(s); and (b) opening a brokerage account without first providing to the relevant brokerage firm(s) a copy of the Commission's filed complaint in this matter and any judgment that the Commission may obtain against him in this matter.

IV.

Issue an order directing Defendant Sang Phan to pay disgorgement of all ill-gotten gains or unjust enrichment and to pay prejudgment interest on the amount ordered to be disgorged, to effect the remedial purposes of the federal securities laws.

V.

Issue an Order requiring Defendants Phans, pursuant to Sections 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)], to pay civil monetary penalties.

VI.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

RESPECTFULLY SUBMITTED,

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