UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STONE

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. Cole PALMER, Defendant.	No. ST-25-02

MEMORANDUM AND ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

D. Drogba, District Judge.

Plaintiff United States Securities and Exchange Commission ("Commission" or "SEC") filed this complaint against defendant Cole Palmer ("Palmer"), alleging that Palmer engaged in insider trading activity in violation of the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), and Commission Rule 10b-5 ("Rule 10b-5") when he traded Fofana, Fernandez, and Gusto ("FFG") stock on June 3, 2024.

Following limited discovery in the present action, the Commission now moves for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, seeking to freeze all of Palmer's assets. An asset freeze is a particular flavor of preliminary injunction, oftentimes utilized by the Commission when it brings civil claims against a trader alleging a violation of the securities laws due to insider trading to prevent asset dissipation.

For the reasons stated herein, the Commission's motion for a preliminary injunction freezing Palmer's assets is GRANTED.

Facts

Defendant Palmer was a Managing Director at FFG, a Paris-based asset manager. FFG went public in 2022; its common stock trades on the New York Stock Exchange ("NYSE"). FFG manages over $10,000,000,000 of client assets across the public and private markets. Palmer was based out of FFG's headquarters in Paris. In his role at FFG, Palmer managed over $250,000,000 of client assets. He is a seasoned securities market professional with over twenty years of experience and extensive knowledge of the securities industry and securities laws.

The Commission's claims arise from Palmer's trades of FFG's publicly traded common stock between June 3, 2024, and June 6, 2024. During May 2024, FFG was in the process of conducting a then-confidential securities offering of common stock (the "Offering") to be listed on the NYSE. Despite considerable efforts by FFG to shield non-essential personnel from this information, Palmer came to learn of the offering. Palmer learned that FFG would file its offering of 10,000,000 shares of common stock with the Commission on the morning of June 6, 2024, before the market opened for trading.

Palmer knew that the FFG's stock price would be negatively affected by the Offering.[1] In an attempt to profit from the Offering, Palmer planned to short[2] FFG's stock. Palmer knew,

[1] During a follow-on offering of a company's equity securities, the price per share of the offering company's securities will almost always fall. The price per share will usually fall because the increase of shares reduces the profits per share and voting power carried by each share, thereby making each share less valuable.

[2] "Shorting" an asset is essentially a bet by a securities trader that the market value of a stock will fall. A short occurs through a complex derivates transaction. First, the trader borrows shares of a publicly traded company from a brokerage, who becomes the lender, with an obligation to return the shares on a specified date. The trader will then immediately sell the lender's shares on the open market. The trader will then wait for the stock's price per share to fall before buying back the same number of shares at a lower price. The trader will profit the difference between the sale price and the purchase price, minus fees and borrowing costs paid to the lender.

however, that he could not trade on his knowledge of FFG's offering, because the information he planned to trade upon was material non-public information ("MNPI").

In an attempt to make his knowledge about the Offering public, Palmer made a post on the r/WallStreetBets subreddit[3] ("WSB Subreddit"). On the WSB Subreddit, posters discuss stock and option trading. The WSB Subreddit has over twenty million active users who visit the website daily. The WSB Subreddit is notable due to posters promoting aggressive trading strategies, which often result in extreme gains and losses. The information posted to the site is not checked for accuracy. Palmer's post, published to the WSB Subreddit at 8:00 a.m. on Monday, June 3, 2024 (the "Post"), read:

> FFG. . . Must Short!!!
>
> I am well-connected with employees HIGH UP at Fofana, Fernandez, and Gusto. Their stock has been going to the moon, but it won't last long. I have information to share with the WSB community: employees have informed me that the firm plans to issue additional equity in an offering later this month. FFG will offer 10,000,000 shares (pricing to be announced after price impact). We all know that additional shares equal a lower share price. The offering will be filed with the SEC on Thursday morning, before the market opens. MOVE QUICKLY AND SHORT THE STOCK ASAP!!

The parties agree that all information that could have been considered MNPI was disclosed by Palmer in the Post. After waiting forty-eight hours, Palmer began to execute his short. On June 5, 2024, at 9:00 a.m., Palmer borrowed 200,000 shares of FFG stock, valued at $420,000, from Weisblatt Frank, a Stone-based brokerage. Palmer sold those shares on the public market (the "Initial Trade") at $21 per share between 9:30 a.m. and 9:45 a.m. on Wednesday, June 5, 2024.

[3] Reddit is a forum-based social media platform where posters submit content to the site, which can then be "upvoted" or "downvoted" by other members as a show of approval. Subreddits are subject-specific pages on the Reddit website.

Between the time of posting and the time of the Initial Trade (the "Waiting Period"), the Post gained significant traction on the WSB Subreddit. During the Waiting Period, the Post became the "hottest"[4] post on the WSB Subreddit, earning one hundred thousand upvotes. Over five hundred commenters posted screenshots of executed trades that mirrored the Initial Trade in the comment section of the Post.

During the Waiting Period, FFG's stock fell 1.0%, while the average NYSE-listed company's stock grew 0.2%. The stock of asset managers with a similar market capitalization to FFG fell 0.7% during the Waiting Period. NYSE trading data showed that trade volume in FFG stock increased 35% during the Waiting Period compared to the average of the previous quarter. NYSE-wide trading volume during the Waiting Period was not materially different from NYSE-wide trading volume during the last quarter. Additionally, the Bank of Boston, a major global investment bank, downgraded FFG's rating from "hold" to "sell."[5] Three other major investment banks and brokerages followed. The parties agree that no other information uniquely material to the price of FFG's stock was released during the Waiting Period.

Before the morning bell on June 6, 2024, FFG filed Form F-3 with the Commission. FFG's filing announced that it was issuing an additional 10,000,000 shares of common stock. FFG's stock immediately fell from $20.79 per share to $17.00 per share, an 18.23% reduction in price per share value. Palmer quickly bought 200,000 shares from the open market to cover his short position. Palmer returned the 200,000 shares of FFG common stock to Weisblatt Frank, profiting $800,000 from his trade.

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[4] Posts that become "hot" get posted on the WSB Subreddit's main page, thereby becoming visible to all subreddit users when they first visit the website.

[5] "Buy/Sell/Hold" recommendations are issued by equity research analysts working for investment banks and brokerage firms as trading recommendations for their clients.

On July 10, 2024, FFG fired Palmer after its compliance team determined that Palmer's trade was in violation of the firm's trading policy. The next day, FFG submitted a whistleblower complaint through the Commission's Tips, Complaints, and Referrals ("TCR") system.[6] The Commission launched an investigation into Palmer's trading of FFG stock shortly thereafter. On November 5, 2024, Palmer was served with a Wells Notice,[7] informing Palmer that the Commission planned to pursue an enforcement action against him. Palmer returned his Wells Submission[8] on November 18, 2024. He led investigators to the Post and clearly outlined his short of FFG stock. Palmer also noted in his Wells Submission that he had voluntarily ceased trading activity since being fired by FFG, and that he would submit to the jurisdiction of the United States if an enforcement action were filed in the United States.

On December 24, 2024, the Commission filed the present action against Palmer in the United States District Court for the District of Stone under Section 17 of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5.

Discussion

This Court has jurisdiction over the Commission's claims under 28 U.S.C. § 1331 and 15 U.S.C. § 78aa. Section 22(a) of the Securities Act and Section 27 of the Exchange Act "confer general equity powers upon the district courts" that are "invoked by a showing of a securities law violation." SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1103 (2d Cir. 1972). "[O]nce the

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[6] The Commission's TCR system allows whistleblowers to submit anonymous complaints about violations of the securities laws.

[7] A Wells Notice is a letter providing the prospective defendant with a summary of the evidence and legal theories the Commission's Staff will rely upon in prosecuting the action if commencement of the action is approved.

[8] A Wells Submission is a voluntary response to a Wells Notice where the potential defendant to an enforcement action can outline their version of the facts and legal theories in an attempt to convince the Commission not to pursue an enforcement action.

equity jurisdiction of the district court [is] invoked, the court [may] order all equitable relief necessary under the circumstances," SEC v. Materia, 745 F.2d 197, 200 (2d Cir. 1984), "including the impoundment of assets." SEC v. Am. Bd. of Trade, Inc., 830 F.2d 431, 438 (2d Cir. 1987).

Presently, federal courts are divided regarding the showing required for the Commission to obtain a preliminary injunction when seeking to freeze a defendant's assets. This is an issue of first impression in this Court; neither this Court nor the Fourteenth Circuit Court of Appeals has considered this question before.

1. Appropriate Standard

The Commission has asked this Court to adopt the Second Circuit's test outlined in Smith v. SEC, 653 F.3d 121 (2d Cir. 2011). Palmer urges this Court to adopt the traditional four-part test applied by most other circuits. See SEC v. Chappell, 107 F.4th 114, 127 n.19 (3d Cir. 2024).

Typically, a party "seeking a preliminary injunction must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). As discussed above, an asset freeze is a particular flavor of preliminary injunction. Section 20(b) of the Securities Act provides:

> Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of [the Securities Act] . . . the Commission may, in its discretion, bring an action in any district court . . . to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

15 U.S.C. § 77t(b). Section 21(d) of the Exchange Act contains nearly identical language. See 15 U.S.C. § 78u(d). The purpose of an asset freeze is to ensure "that any funds that may become due can be collected." SEC v. Unifund SAL, 910 F.2d 1028, 1041 (2d Cir. 1990).

Here, the Commission seeks an asset freeze against Palmer, which will prevent Palmer from trading or participating in other activities that could dissipate the assets Palmer would use to pay a civil penalty to the Commission.

Because an asset freeze is a form of a preliminary injunction, federal courts in most circuits require the Commission to meet the "standard" four-part preliminary injunction test when seeking an asset freeze against a trader accused of insider trading. See, e.g., Chappell, 107 F.4th at 129-31 (3d Cir. 2024). The traditional four-part test requires the Commission to show that (1) the Commission is likely to succeed on the merits; (2) there is likely to be irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the Commission's favor; and (4) an injunction is in the public interest. Winter, 555 U.S. at 20. The traditional four-part test is reflected in several hundred years of jurisprudence, dating to some of the Supreme Court's earliest cases. Georgia v. Brailsford, 2 U.S. 402, 406 (1792).

In the Second Circuit, however, preliminary injunctions sought by the Commission do not require a showing of irreparable harm or the unavailability of remedies at law. Unifund SAL, 910 F.2d at 1036. Instead, the Commission only needs to make "a substantial showing of likelihood of success as to both a current violation and the risk of repetition." SEC v. Cavanagh, 155 F.3d 129, 132 (2d Cir. 1998). The Second Circuit requires an even lesser showing when the preliminary injunction the Commission seeks is an asset freeze, only requiring the Commission to "show either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the federal securities laws." SEC v. Byers, No. 08 Civ.

7104, 2009 WL 33434, at *3 (S.D.N.Y. Jan. 7, 2009); see also SEC v. Heden, 51 F. Supp. 2d 296, 298 (S.D.N.Y. 1999) ("Unlike a preliminary injunction enjoining a violation of the securities laws, which requires the [Commission] to make a substantial showing of likelihood of success as to both a current violation and the risk of repetition, an asset freeze requires a lesser showing.").

Palmer contends that nothing in the text of the Securities Act or the Exchange Act, or the history of their enforcement, counsels this Court to abandon the traditional four-part test that governs injunctive relief, including asset freezes. See Daniel J. Morrissey, SEC Injunctions, 68 Tenn. L. Rev. 427, 437–39 (2001). He correctly argues that the Supreme Court has declared that it is only appropriate for a statutorily authorized injunction to displace traditional equitable principles governing injunctive relief if there is a "clear and valid legislative command" to displace the conventional four-part test. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982). Congress may intervene and guide or control the exercise of the lower courts' discretion in issuing equitable remedies; however, lower courts should not "lightly assume that Congress has intended to depart from established [equitable] principles." Id. Palmer maintains that the plain language of the Securities Act and the Exchange Act does not contain a clear statement from Congress to the courts. SEC v. Gentile, 939 F.3d 549, 555-58 (3d Cir. 2019). He points this Court to what he asserts are analogous statutes considered in the Supreme Court's prior cases, like Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944). But see Tenn. Valley Auth. v. Hull, 437 U.S. 153, 173 (1978).

This Court disagrees with Palmer's textual analysis, however. The language of Section 20(b) of the Securities Act amounts to a clear and valid legislative command not to follow the court's traditional equitable principles. See Unifund SAL, 910 F.2d at 1041 ("Congress has authorized the Commission to obtain preliminary injunctive relief upon a 'proper showing.'"); see also Heden, 51 F. Supp. 2d at 298. Although the Second Circuit is the only circuit to have taken this position, its standing as the preeminent court on securities regulation questions gives its position great weight. Karen Patton Seymor, Securities and Financial Regulation in the Second Circuit, 85 Fordham L. Rev. 225, 225 (2016). This approach also comports with the history of the Commission's injunction authority. See Morrissey, SEC Injunctions, supra, at 437–39.

Finally, Palmer contends that general principles of equity counsel this Court not to abandon the traditional four-part test for obtaining a preliminary injunction. When issuing equitable remedies, courts should pay particular attention to the public consequences of employing the injunction. See, e.g., SEC v. Bonastia, 614 F.2d 908, 912 (3d Cir. 1980). Thus, Palmer contends, this Court should not adopt a standard that lowers the bar to obtaining such an injunction. Of course, this Court understands that an injunction is not a minor event. However, traditional concerns of equity counsel this Court to weigh the impact of granting the injunction not only on the trader accused of insider trading, but also to consider the risk to the public, which is significant here. Id.

For these reasons, this Court adopts the Second Circuit's approach.

2. Application of Standards

As discussed above, the Second Circuit's test only requires the Commission to show "either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the securities laws." Unifund SAL, 910 F.2d at 1036.

Under the classical theory of insider trading, a corporate insider who misappropriates material non-public information ("MNPI") in breach of their fiduciary duty and trades on that information to their advantage violates Rule 10b-5 by unlawfully employing a scheme to defraud and engaging in an act of fraud or deceit. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 729 (1975) (outlining the general elements of Rule 10b-5); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (delineating that the elements of Section 10(b) of the Exchange Act mirror the elements of Rule 10b-5). Corporate insiders, such as Palmer, have a duty to "abstain" from trading or "disclose" the relevant MNPI before trading. Cady, Roberts & Co., 40 S.E.C. 907, 911-12 (1961).

Of course, trading on public information does not violate the securities laws. United States v. Libera, 989 F.2d 596, 600-01 (2d Cir. 1993). Determining when information becomes "public," however, is a difficult inquiry. There is no hard-and-fast rule as to when information becomes public for the purposes of securities trading. See SEC v. Mayhew, 121 F.3d 44, 50–51 (2d Cir. 1997). Information becomes public when either: (1) disclosed to achieve a broad dissemination to the investing public generally and without favoring any special group; or (2) although known only by a few persons, their trading on it has caused the information to be fully impounded into the stock price. Compare Dirks v. SEC, 463 U.S. 646, 653 n.12 (1983) (achieving "broad dissemination" was sufficient to find that information was public), with Libera, 989 F.2d at 601 (requiring information to be "fully impounded into the price of the particular stock" before it achieves publicity).

Palmer asserts that FFG's plans to conduct an equity offering was public information because it was broadly disseminated to the investing public. Information is "broadly disseminated" once there is a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the total mix of information considered when making an investment decision. United States v. Contorinis, 692 F.3d 136, 143 (2d Cir.

2012). Information alters the "total mix" of available information when disclosed "to achieve a broad dissemination to the investing public generally and without favoring any special person or group." Dirks, 463 U.S. at 653 n.12. Information may alter the "total mix" of available information available to the reasonable investor even if it does not reveal all details of a material event. United States v. Mylett, 97 F.3d 663, 666 (2d Cir. 1996). Widespread speculation of impending corporate actions suggests that the information is public. See United States v. Cusimano, 123 F.3d 83, 89 & n.6 (2d Cir. 1997). However, the information must be more specific than a general, isolated rumor. Mylett, 97 F.3d at 666.

Palmer argues that the Post he created altered the total mix of available information available to any person selling or buying FFG stock because the information became widely viewable on a public forum frequented by the investing public. See Cusimano, 123 F.3d at 89 & n.6. He also contends that the information he supplied in the Post was "fully impounded" in the price of the stock when he made the Initial Trade based on changes in the NYSE's trading data. Mayhew, 121 F.3d at 50–51. The Commission contends, however, and this Court agrees, that the Post amounted to nothing more than an unsubstantiated rumor, which cannot be compared to information substantiated by the corporation or its insiders. Mylett, 97 F.3d at 666. Nor was this rumor fully impounded into the price of the stock, which was still fluctuating when Palmer executed his trade. See SEC v. Falbo, 14 F. Supp. 2d 508, 522 (S.D.N.Y. 1998). Thus, the Commission is likely to succeed on the merits, and Palmer likely violated the securities laws, because the information Palmer traded on was non-public when he executed the Initial Trade.

Even if this Court were to apply the traditional four-factor test, an asset freeze would be warranted. The traditional standard, articulated in Winter, requires the Commission to establish that: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. Winter, 555 U.S. at 20. No one factor is dispositive. Id. Palmer concedes that the balance of equities tips in the Commission's favor and that an injunction is in the public interest. As discussed above, the Commission can show that Palmer likely committed a securities law violation; therefore, the Commission is likely to succeed on the merits. Finally, the Commission, as representative of the public, is likely to suffer irreparable harm in the absence of preliminary relief.

The Commission may show irreparable harm by showing that Palmer's activities will result in asset dissipation that will prevent the payment of a potential civil penalty. Unifund SAL, 910 F.2d at 1042. Asset dissipation risk is heightened when foreign traders and entities are involved, especially if the trader is a citizen of a non-extradition country. Id. Palmer's cooperation with the investigation and his willful cessation of trading activity is not sufficient to allay these concerns, especially as the cessation of his trading activity appears conveniently timed to avoid suit. Id.; see also United States v. Parke, Davis & Co., 362 U.S. 29, 48 (1960).

Thus, although this Court need not squarely decide this issue, this Court would likely find that a preliminary injunction freezing Palmer's assets and prohibiting him from trading in securities is warranted even under the traditional test.

Conclusion

For the foregoing reasons, Plaintiff Commission's preliminary injunction freezing Defendant Palmer's assets is GRANTED.

SO ORDERED.

Dated: August 25, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

Cole PALMER, Appellant, v. UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Appellee.	)	No. ST-25-02

NOTICE OF APPEAL

Cole Palmer appeals the United States District Court for the District of Stone's Order granting a preliminary injunction in favor of Appellee the United States Securities and Exchange Commission. This Court has jurisdiction over appeals from district court orders granting injunctions under 28 U.S.C. § 1292(a)(1) and will consider all issues raised in the court below.

Matthew Comeau
Clerk

Dated: September 25, 2025

Appendix

The Securities Act of 1933, 15 U.S.C. § 77t(b)

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

The Securities Exchange Act of 1934

Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

The Securities Act of 1933, 15 U.S.C. § 77q(a)

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud, or
(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

The Exchange Act of 1934, 15 U.S.C. § 78j(b)

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange. . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Commission Rule 10b-5

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) to employ any device, scheme, or artifice to defraud,
> (b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

Endangered Species Act, 16 U.S.C. § 1536

> [F]ederal departments and agencies shall . . . utilize their authorities in furtherance of the purposes of [the ESA] by . . . taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical.

Emergency Price Control Act of 1942, 50 U.S.C.A. Supp. II, §§ 901 et seq.

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, . . . he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provisions, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.