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HEDGE FUND CHARGED IN THE FIRST U.S. CRIMINAL CASE FOR DECEPTIVE "MARKET TIMING," ALONG WITH A FORMER MUTUAL FUND BROKER

PHILADELPHIA – United States Attorney Pat Meehan today announced the first criminal case in U.S. history against a hedge fund for deceptive "market timing."[1] BEACON ROCK CAPITAL, LLC, a Portland, Oregon-based hedge fund and THOMAS GERBASIO, a former New York and Philadelphia-based broker, were charged today by criminal information[2] in connection with a scheme to defraud mutual funds and their shareholders of approximately $2.4 million.

According to the federal charges, BEACON ROCK and GERBASIO received, and were aware of, numerous warnings from mutual fund companies that such market timing was unwanted and potentially harmful to mutual fund shareholders, and that the mutual funds would not permit such trades. Nevertheless, in order to execute trades in contravention of the restrictions that mutual funds placed on such trading, GERBASIO, and others at his direction, engaged in a number of deceptive and fraudulent practices designed to conceal the identity of

[1] Market timing is a mutual fund trading strategy that involves short-term purchases and sales of mutual fund shares. A market timing strategy generally attempts to take advantage of perceived inaccuracies in mutual fund share prices, which are typically calculated only once per day. Mutual funds typically calculate their share price - or per share net asset value ("NAV") - as of the time of the close of markets in the United States. This calculation is performed using the most current market prices for the securities held by the mutual funds. However, because foreign securities markets typically close several hours before markets in the United States, the prices of international securities held by a mutual fund are frequently "stale," that is, several hours old, by the time the NAV calculation occurs. Based on events that have transpired during this time lag, an investor, employing a market timing strategy, may conclude that the NAV of such a fund understates or overstates the current value of the fund's securities, and engage in short-term trading to take advantage of this perceived disparity. Most mutual funds do not permit such trades because they tend to have an adverse impact on shareholders by potentially diluting the value of a fund's shares, increasing the volatility of a fund's values and increasing transaction costs. Mutual funds frequently employ policies and procedures that are designed to detect and prevent market timing activity, and expressly or implicitly reserve the right to reject market timing transactions in their prospectuses.

[2] An Information is an accusation. Defendants are presumed innocent unless and until proven guilty.

defendant BEACON ROCK, and the nature of its trading activity. BEACON ROCK was aware that defendant GERBASIO and others were engaged in deceptive acts on its behalf. GERBASIO was never licensed to sell securities or to provide investment advice.

These deceptive practices included: (1) creating and using multiple account numbers and other identifiers; (2) structuring mutual fund purchases to remain under certain perceived thresholds; (3) opening additional accounts with at least one other clearing firm; and, (4) misrepresenting defendant BEACON ROCK's trading strategy when directly confronted by mutual funds. BEACON ROCK, GERBASIO, and others engaged in this fraudulent scheme knowing that, absent such deceptive conduct, many mutual funds would refuse to accept BEACON ROCK's trades, and they would not earn the millions of dollars in profits and fees that they ultimately earned. Through this scheme, BEACON ROCK made in excess of 26,000 market timing trades, resulting in approximately $2.4 million in net trading profits, and GERBASIO earned approximately $215,000 in compensation.

"These defendants would not have been able to make the money that they did on the trades had they not misrepresented themselves to the mutual funds," said Meehan. "That is where the fraud occurred. Gerbasio and Beacon Rock were aware of and received numerous warnings from mutual fund companies that market timing was unwanted and potentially harmful to their shareholders. The defendants simply found a way around the obstacles by cheating."

INFORMATION REGARDING THE DEFENDANTS

NAME	ADDRESS	AGE
Beacon Rock Capital LLC	Portland, Oregon	
Thomas Gerbasio	Ocean City, NJ	36

If convicted, defendants face the following maximum possible sentences:

BEACON ROCK: $25 million fine, and a $400 special assessment.

GERBASIO: 20 years imprisonment, a 3 year period of supervised release, a $5,000,000 fine, and a $100 special assessment.

The case was investigated by the United States Postal Inspection Service and the Federal Bureau of Investigation. The United States Securities and Exchange Commission also provided valuable assistance. The case has been assigned to Assistant United States Attorney Derek A. Cohen.

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