

[Securities Regulation Daily Wrap Up, TOP STORY—E.D. Pa.: SEC: Hedge fund manager used shareholder status to obtain, trade on inside information, \(Sept. 21, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Amanda Maine, J.D.](#)

The SEC charged hedge fund manager Leon Cooperman with insider trading, alleging that he used his status as one of a company's largest shareholders to gain access to senior executives and obtain confidential information, which he then traded on. The SEC also charged him with violating the beneficial ownership reporting requirements of the federal securities laws ([SEC v. Cooperman](#), September 21, 2016).

Executive access. According to the SEC's complaint, Cooperman employed a strategy of accumulating large positions in companies and developing close relationships with those companies' senior executives. One of these companies was Atlas Pipeline Partners (APL). The SEC alleged that as a result of his position as one of the company's largest shareholders, Cooperman had a level of access to APL's executives that was not available to its smaller shareholders.

Elk City sale. The SEC alleged that an unnamed APL executive told Cooperman during three phone conversations that the company was in the process of negotiating the sale of its Elk City operating facilities, which was a substantial APL asset. The executive told him about the sale because he believed that Cooperman had an obligation not to use the information to trade APL securities and that Cooperman had explicitly agreed that he would not do so.

Following his first conversation with the executive, Cooperman and his advisory firm, Omega Investors, began buying APL securities, despite criticizing the business earlier that same day, the SEC alleged. APL's sale of the Elk City facility for \$682 million was announced less than a month following Cooperman's first conversation with the executive, and APL's stock price rose 31 percent. According to the SEC, accounts managed by Cooperman generated profits of over \$4 million by trading APL securities at his direction.

Cover up. The SEC also alleged that Cooperman tried to cover up his insider trading. A year and a half after his APL trades, Cooperman called the executive to discuss a subpoena sent by the SEC regarding his trades to seek the executive's assurance that he had not shared confidential information about the looming Elk City sale, which the executive believed was an attempt to fabricate a story in case the two were questioned about their Elk City conversations. The complaint also stated that the executive was "shocked and angered" when he learned that Cooperman had traded APL securities in advance of the public announcement of the Elk City sale.

Beneficial ownership reporting. The SEC also charged Cooperman with repeatedly violating laws requiring him to report beneficial ownership of securities of more than 5 or 10 percent. He allegedly failed to timely file these reports over 40 times with respect to eight different issuers.

Ceresney's remarks. In the SEC's [press release](#) announcing the charges, Enforcement Director Andrew Ceresney said that Cooperman abused the access he gained as a large shareholder by trading on confidential corporate information, "undermining public confidence in the securities markets." During a press call with reporters, Ceresney was asked if the Second Circuit's *Newman* opinion applied in the enforcement action against Cooperman. Ceresney noted that *Newman* involved down-chain tippees and whether a tipper received a personal benefit from the tippee. The charges against Cooperman allege that he breached a duty to a source of confidential information and misappropriated that information for his own trading purposes under the Supreme Court's 1997 *O'Hagan* decision, Ceresney explained, making *Newman* inapplicable here.

Attorneys: David L. Axelrod for the SEC. Theodore Wells Jr. and Daniel Kramer (Paul, Weiss, Rifkind, Wharton & Garrison) for Leon G. Cooperman and Omega Advisors, Inc.

Companies: Omega Advisors, Inc.

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