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9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA (Bakersfield Division)**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 FRANK LYNN BLYSTONE,

16 Defendant.

Case No.

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

17  
18 Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

19 **SUMMARY OF THE ACTION**

20 1. This case involves insider trading by Defendant Frank Lynn Blystone  
21 (“Blystone”) in the securities of Tri-Valley Corporation (“TIV”) in advance of an  
22 announcement that sent the company’s stock price plunging. On April 6, 2010, TIV  
23 issued a press release that it had entered into an agreement to sell securities in a  
24 registered direct offering to six institutional investors at a deep discount from the  
25 current market price. On March 23, 2010 and April 5, 2010, Blystone, the recently-  
26 retired chief executive officer and chairman of the board of TIV, traded on the basis of  
27 material nonpublic information about the announcement. Blystone thereby avoided  
28 losses of approximately \$36,000 resulting from his sale of 50,100 shares of TIV stock.

1 2. By engaging in the conduct alleged in this complaint, Blystone  
2 violated prohibitions on insider trading contained in the federal securities laws.  
3 The Commission seeks a judgment permanently enjoining Blystone from future  
4 violations of these laws, ordering disgorgement of losses he avoided as a result of  
5 the unlawful trading, plus prejudgment interest thereon, imposing a civil penalty,  
6 and barring him from serving as an officer or director of any public company.

7 **JURISDICTION AND VENUE**

8 3. This Court has jurisdiction over this action pursuant to Sections 20(b)  
9 and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b) and  
10 77v(a), and Sections 21(d)(1), 21(e), 21A, and 27 of the Securities Exchange Act  
11 of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1, and 78aa.  
12 Blystone, directly or indirectly, made use of the means or instrumentalities of  
13 transportation or communication in interstate commerce, or of the mails, or the  
14 facility of a national securities exchange, in connection with the transactions, acts,  
15 practices and courses of business alleged in this complaint.

16 4. Venue is proper pursuant to Section 22(a) of the Securities Act, 15 U.S.C.  
17 § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because Blystone  
18 resides, and certain of the transactions, acts, practices, and courses of business  
19 constituting violations of the federal securities laws occurred, within this district.

20 **THE DEFENDANT**

21 5. Frank Lynn Blystone, age 76, resides in Bakersfield, California.  
22 Blystone was chief executive officer and chairman of the board of directors of  
23 Tri-Valley Corporation, until he retired on March 5, 2010.

24 **RELATED ENTITY**

25 6. Tri-Valley Corporation is a Delaware corporation headquartered in  
26 Bakersfield, California which engages in petroleum and mineral exploration and  
27 development. At all relevant times herein, TIV's securities traded on the NYSE  
28 AMEX under the symbol "TIV" and were registered with the Commission

1 pursuant to Section 12(b) of the Exchange Act.

2 **BLYSTONE'S INSIDER TRADING**

3 **A. Blystone's Duty to TIV**

4 7. TIV had a written insider trading policy in place for many years  
5 during the time that Blystone was employed by the company.

6 8. On January 6, 2009, Blystone was present when TIV's Board of Directors  
7 voted to adopt an updated insider trading policy, which prohibited employees from  
8 trading or tipping others when in possession of material nonpublic information  
9 acquired in the course of their employment.

10 9. Prior to his retirement, Blystone had read TIV's insider trading policy  
11 and, as the company's former chief executive officer, was familiar with the prohibition  
12 on trading or tipping others when in possession of material nonpublic information.

13 **B. Blystone Obtains Material Nonpublic Information While Employed at TIV**

14 10. In late December 2009, TIV retained an investment banking firm  
15 (the "Firm") to act as its financial advisor in connection with a proposed offering  
16 of securities. Initially, the parties contemplated that the Firm would raise between  
17 \$10 and \$15 million for TIV in a fully underwritten public offering of securities.

18 11. Blystone knew the Firm had been retained and received a series of e-mail  
19 updates prior to his retirement detailing TIV's ongoing efforts to raise capital and  
20 problems that had been encountered in the offering.

21 12. On February 10, 2010, approximately one month before he retired,  
22 Blystone received an e-mail from TIV's chief financial officer stating that the Firm  
23 decided to proceed with a with a registered direct offering of TIV common stock,  
24 rather than a fully underwritten offering.

25 13. On February 25, 2010, Blystone received a further e-mail update from  
26 TIV's chief financial officer informing him that the Firm had notified TIV that the  
27 market for thinly traded small cap stock had dwindled significantly and pricing had  
28 become tougher. As a result, according to the e-mail, TIV was forced to break the

1 offering into three \$5 million tranches. The e-mail further disclosed that TIV had  
2 received firm investment commitments totaling \$3.5 million from only two of six  
3 prospective institutional investors that were solicited, and that the Firm was  
4 seeking a third partner in an effort to close the first \$5 million tranche before TIV  
5 filed its annual report on Form 10-K.

6 14. Based on information he received while still employed at TIV,  
7 Blystone concluded prior to selling his stock that the terms of the offering would  
8 be “onerous.”

9 15. Blystone foresaw that either the company’s securities would be sold at  
10 a discount to the market price or additional securities would be issued to the  
11 investors if the price of TIV stock fell, thereby diluting the value of the company’s  
12 stock.

13 16. Following his retirement on March 5, 2010, Blystone obtained  
14 additional information that reinforced his concerns about TIV’s offering.

15 17. After learning in a March 15, 2010 e-mail from a long-time friend and  
16 business associate that TIV hoped to close on the first tranche of the financing in  
17 the near future, Blystone replied, “\$5 million is not going to get the job done” and  
18 speculated that TIV may instead sell assets. By March 17, 2010, Blystone  
19 confirmed in another e-mail to his friend that TIV was planning to sell two oil  
20 drilling leases in what he characterized as a “fire sale.”

21 **C. Blystone Illegally Sells TIV Securities on the Basis of Material**  
22 **Nonpublic Information Concerning the Registered Direct Offering**

23 18. On two separate occasions, Blystone sold TIV stock on the basis of  
24 material nonpublic information concerning the company’s planned registered  
25 direct offering of securities.

26 19. On March 23, 2010, Blystone sold 5,000 shares of TIV stock from a  
27 joint brokerage account held in the name of Blystone and his wife, as trustees for  
28 the benefit of the Blystone Revocable Trust.

1           20. On April 5, 2010, Blystone sold the remaining 45,100 shares held in  
2 the brokerage account.

3           21. Prior to March 23 and April 5, 2010, Blystone had never sold shares  
4 of TIV stock.

5           22. By selling TIV stock using the material nonpublic information he  
6 received, Blystone directly, indirectly or derivatively breached a duty of trust and  
7 confidence owed to TIV and its shareholders.

8           23. Blystone acted with scienter. He knew, or was reckless in not knowing,  
9 that the information he learned during his tenure as TIV's chief executive officer  
10 was material and nonpublic. Blystone knew he owed a duty of trust and confidence  
11 to TIV and its shareholders. Nevertheless, for the first time ever, Blystone sold  
12 shares of TIV stock on March 23 and April 5, 2010.

13 **D. TIV's April 6, 2010 Announcement**

14           24. Prior to the opening of the market on April 6, 2010, TIV announced that  
15 it had entered into an agreement to sell securities to six institutional investors in a  
16 registered direct offering. According to the press release, TIV raised \$5 million  
17 through the sale of 3,846,154 shares of common stock at a price of \$1.30 per share,  
18 and warrants to purchase up to 2,307,692 additional shares at prices ranging between  
19 \$1.50 and \$1.95 per share.

20           25. TIV's stock declined 38.6% on the news, falling from a closing price of  
21 \$2.15 on April 5, 2010, to \$1.32 on April 6, 2010. Trading volume on April 6, 2010,  
22 was 4,937,791 shares, compared to 409,031 shares the day before the announcement,  
23 and historical average volume of about 64,200 shares during the previous 30 days.

24 **E. Blystone's Losses Avoided**

25           26. Blystone's March 23 and April 5, 2010 TIV stock sales were executed at  
26 prices ranging from \$2.00 to \$2.099 per share. Consequently, Blystone avoided losses  
27 of \$36,267.00 due to his sale of stock prior to TIV's April 6, 2010 announcement.

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**FIRST CLAIM FOR RELIEF**

**FRAUD IN THE OFFER OR SALE OF SECURITIES**

**Violations of Sections 17(a)(1) and (3) of the Securities Act**

27. The Commission re-alleges and incorporates by reference paragraphs 1 through 26 above.

28. Defendant Blystone, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter:

- employed devices, schemes, or artifices to defraud; and/or
- engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

29. Blystone learned material nonpublic information concerning TIV's upcoming registered direct offering. As a TIV employee, Blystone owed a fiduciary duty to TIV's shareholders, as well as a duty of trust or confidence to TIV as his employer, to maintain such information in confidence until it was publicly disseminated.

30. Blystone breached his fiduciary duty to TIV's shareholders, when on March 23, and April 5, 2010, he knowingly traded on the basis of material nonpublic information concerning the registered direct offering.

31. By engaging in the conduct described above, defendant Blystone violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and (3) of the Securities Act, 15 U.S.C. § 77q(a)(1) and (3).

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**SECOND CLAIM FOR RELIEF**

**FRAUD IN CONNECTION WITH THE  
PURCHASE OR SALE OF SECURITIES**

**Violations of Section 10(b) of the Exchange Act  
and Rules 10b-5(a) and (c) Thereunder**

32. The Commission re-alleges and incorporates by reference paragraphs 1 through 26 above.

33. Defendant Blystone, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- employed devices, schemes, or artifices to defraud; and/or
- engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

34. Blystone learned material nonpublic information concerning TIV's upcoming registered direct offering. As a TIV employee, Blystone owed a fiduciary duty to TIV's shareholders, as well as a duty of trust or confidence to TIV as his employer, to maintain such information in confidence until it was publicly disseminated.

35. Blystone breached his fiduciary duty to TIV's shareholders, when on March 23, and April 5, 2010, he knowingly traded on the basis of material nonpublic information concerning the registered direct offering.

36. By engaging in the conduct described above, defendant Blystone violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

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**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

**I.**

Issue findings of fact and conclusions of law that defendant Blystone committed the alleged violations.

**II.**

Issue a final judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining defendant Blystone and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the final judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and 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.**

Order defendant Blystone to disgorge all ill-gotten gains from his illegal conduct, including any losses avoided, together with prejudgment interest thereon.

**IV.**

Order defendant Blystone to pay a civil penalty under Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

**V.**

Order that defendant Blystone be barred, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

**VI.**

Retain jurisdiction of this action in accordance with the principles of equity




1 and the Federal Rules of Civil Procedure in order to implement and carry out the  
2 terms of all orders and decrees that may be entered, or to entertain any suitable  
3 application or motion for additional relief within the jurisdiction of this Court.

4 **VII.**

5 Grant such other and further relief as this Court may determine to be just and  
6 necessary.

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8 Respectfully submitted,

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10 DATED: May 10, 2012

  
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11 William S. Fiske  
12 Attorney for Plaintiff  
13 Securities and Exchange Commission  
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