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# INSIDE

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# LOOKING BACK

2012 gave us another year of aggressive enforcement of insider trading laws. The Department of Justice (“DOJ”) extended its perfect record at trial, including a verdict against the former chief executive of McKinsey & Co. and Goldman Sachs board member Rajat Gupta—the most high-profile defendant to date. Through 2012, the government continued its pursuit of hedge funds and their sources of inside information, including expert networks.

As the *Rajaratnam* and *Gupta* cases geared up for appeals, the slew of cooperators ensnared in the investigations began to be sentenced and to have penalties assessed against them by the Securities and Exchange Commission (“SEC”). The sentences handed down were often far below the Sentencing Guidelines range and below what the government had requested. 2012’s sentences solidified the growing notion that cooperation with DOJ may be a defendant’s best chance of attaining a “get out of jail” card.

The increase in insider trading enforcement was not limited to US regulators. In 2012, agencies worldwide showed increased policing and prosecuting of insider trading.

And just as the year was winding down, regulators found their likely next target for insider trading enforcement: executives’ trades under 10b5-1 trading plans.

## OVERVIEW OF INSIDER TRADING LAW

“Insider trading” is an ambiguous and overinclusive term. Trading by insiders includes both legal and illegal conduct. The legal version occurs when certain corporate insiders—including officers, directors and employees—buy and sell the stock of their own company and disclose such transactions to the SEC. Legal trading also includes, for example, someone trading on information he or she overheard between strangers sitting on a train or when the information was obtained through a non-confidential business relationship. The illegal version—although not defined in the federal securities laws—occurs when a person buys or sells a security while knowingly in possession of material nonpublic information that was obtained in breach of a fiduciary duty or relationship of trust.

Despite renewed attention in recent years, insider trading is an old crime. Two primary theories of insider trading have emerged over time. First, under the “classical” theory, the Securities Exchange Act of 1934’s (“Exchange Act”) anti-fraud provisions apply to prevent corporate “insiders” from trading on nonpublic information taken from the company in violation of the insiders’ fiduciary duty to the company and its shareholders.<sup>1</sup> Second, the “misappropriation” theory applies to prevent trading by a person who misappropriates information from a party to whom he or she owes a fiduciary duty—such as the duty owed by a

lawyer to a client.<sup>2</sup>

Under either theory, the law imposes liability for insider trading on any person who improperly obtains material nonpublic information and then trades while in possession of such information. Also, under either theory—until 2012—the law held liable any “tippee”—that is, someone with whom that person, the “tipper,” shares the information—as long as the tippee also knew that the information was obtained in breach of a duty.

In 2012, a decision by the Court of Appeals for the Second Circuit in *SEC v. Obus* arguably expanded tippee/tipper liability to encompass cases where neither the tipper nor the tippee has actual knowledge that the inside information was disclosed in breach of a duty of confidentiality.<sup>3</sup> Rather, a tipper’s liability could flow from recklessly disregarding the nature of the confidential or nonpublic information, and a tippee’s liability could arise in cases where the sophisticated investor tippee should have known that the information may have been disclosed in violation of a duty of confidentiality.<sup>4</sup> It is unclear what impact *Obus* may have on future insider trading cases. At least one district court judge interpreting *Obus* already curtailed the holding by finding that: (1) a tipper’s knowledge that the “disclosure of inside information was unauthorized” was sufficient for liability in a misappropriation case; but (2) a tippee must have “knowledge” that “self-dealing occurred” to be liable under the classical case.<sup>5</sup>

While the interpretation of the scope and applicability of Section 10(b) and Rule 10b-5 to insider trading is evolving, the anti-fraud provisions provide powerful and flexible tools to address efforts to capitalize on material nonpublic information.

Section 14(e) of the Exchange Act and Rule 14e-3 also prohibit insider trading in the limited context of tender offers. Rule 14e-3 defines “fraudulent, deceptive, or manipulative” as the purchase or sale of a security by *any* person with material information about a tender offer that he or she knows or has reason to know is nonpublic and has been acquired directly or indirectly from the tender offeror, the target, or any person acting on their behalf, unless the information and its source are publicly disclosed before the trade.<sup>6</sup> Under Rule 14e-3, liability attaches regardless of a pre-existing relationship of trust and confidence. Rule 14e-3 creates a “parity of information” rule in the context of a tender offer. Any person—not just insiders—with material information about a tender offer must either refrain from trading or publicly disclose the information.

While most insider trading cases involve the purchase or sale of equity instruments (such as common stock or call or put options) or debt instruments (such as bonds), civil or criminal sanctions apply to insider trading in connection with any “securities.” What constitutes a security is not always clear, especially in the context of novel financial products. At least with respect to security-based swap

agreements, Congress has made clear that they are covered under anti-fraud statutes applying to securities.<sup>7</sup>

The consequences of being found liable for insider trading can be severe. Individuals convicted of criminal insider trading can face up to 20 years imprisonment per violation, criminal forfeiture, and fines of up to \$5,000,000 or twice the gain from the offense. A successful civil action by the SEC may lead to disgorgement of profits and a penalty not to exceed the greater of \$1,000,000, or three times the amount of the profit gained or loss avoided. In addition, individuals can be barred from serving as an officer or director of a public company, acting as a broker or investment adviser, or in the case of licensed professionals, such as attorneys and accountants, from serving in their professional capacity before the SEC.

Section 20A of the Exchange Act gives contemporaneous traders a private right of action against anyone trading while in possession of material nonpublic information.<sup>8</sup> Although Section 20A gives an express cause of action for insider trading, the limited application and recovery afforded under the statute make Section 20A an unpopular choice for private litigants. Rather, most private securities claims for insider trading are brought under the implied rights of action found in Sections 10(b) and 14(e) and Rules 10b-5 and 14e-3, respectively.

## 2012 ENFORCEMENT ACTIVITY

In 2012, the SEC filed 55 insider trading actions, and DOJ brought criminal charges involving insider trading against 31 individuals. Remarkably, although the government continued to expend great resources on trials and appeals, enforcement activity in 2012 not only kept pace but surpassed 2011's numbers. The combined total of civil and criminal cases brought in 2012 increased approximately 11% from 2011.

While the SEC and DOJ have been criticized, fairly or not, for not bringing more cases arising from the financial crisis—especially against individuals—both agencies have received abundant praise for their crackdown on insider trading. Insider trading cases, when compared to the sprawling financial crisis investigations, tend to be easier to investigate and easier to explain to a jury. While there has been public outcry to find the villains of the financial crisis and hold them accountable, the government has had a difficult time pinning the blame on one particular person or institution given the unprecedented circumstances that so many (including the government itself) failed to predict. On the other hand, in insider trading cases, the government has had unparalleled success in holding individuals accountable.

As has been the case for the last several years, insider trading cases in 2012 were notable for

their size, both in terms of the sprawling webs involved and the outsized profits alleged. Just as it appeared the cases spawning from “Operation Perfect Hedge”—a nationwide insider trading investigation of a size not seen since the days of Ivan Boesky and Dennis Levine—were coming to an end, at the end of 2012, the government announced the filing of what it termed the largest insider trading case ever, alleging trading profits and losses avoided totaling more than \$270 million.

## GALLEON UPDATE

We pick up the Galleon story where we left off last year. Raj Rajaratnam continued to press his appeal before the Second Circuit and now awaits a ruling, while national attention turned to the trial of Rajat Gupta, the former chief executive of McKinsey & Co. and former board member of Goldman Sachs and Procter & Gamble, who was indicted in late 2011.

### RAJARATNAM APPEAL PRESSES ON

Following Raj Rajaratnam's conviction—and 11-year sentence—on fourteen counts of securities fraud and conspiracy last year, the former hedge fund mogul began 2012 by continuing his fight against the government's use of wiretap evidence. Rajaratnam must fight his conviction from jail as, in December 2011, the Court of Appeals for the Second Circuit denied his request to remain free on bail while the court considers arguments on whether to overturn his conviction.

As we reported in both of our last two Reviews, Rajaratnam had moved to suppress wiretap evidence in the criminal case against him based on his contentions that the government (i) was not entitled to use wiretaps to investigate insider trading because it is not a crime specified in Title III; (ii) failed to establish probable cause or necessity in its wiretap applications; and (iii) failed to minimize monitoring of the conversations recorded.<sup>10</sup> Judge Holwell summarily rejected Rajaratnam's suppression motion, finding that although the affidavits in support of the government's applications contained some misstatements, namely the government's failure to disclose an ongoing SEC investigation, the district court still had sufficient facts to find probable cause.<sup>11</sup> Ultimately, more than 45 wiretapped conversations were played at Rajaratnam's trial.

The wiretap evidence critical to Rajaratnam's prosecution is now central to his appeal. In briefs filed with the Court of Appeals for the Second Circuit early in 2012, Rajaratnam again attacked the validity of the 2008 wiretap order on various grounds, including DOJ's failure to disclose the ongoing SEC investigation into Galleon Group.<sup>12</sup> Rajaratnam argued that misleading statements in the government's wiretap application made it impossible for the court to find either probable cause or necessity of the wiretap before authorizing prosecutors to intercept and record phone conversations of Rajaratnam and others. He went on to urge that Judge Holwell's

after-the-fact determination that probable cause for the wiretap existed could not save the faulty application relied on in the first instance.<sup>13</sup>

The Second Circuit heard oral argument on Rajaratnam's appeal on October 25, 2012. During the argument, Rajaratnam's lawyer contended that the lack of disclosure of the parallel civil investigation was a "reckless disregard for the truth" and the affidavit supporting the wiretap application had "cascading errors, paragraph after paragraph after paragraph."<sup>14</sup> For the most part, the three appellate judges provided little insight during the argument into their thinking on the case. While they did not ask the prosecutor any questions revealing skepticism of the government's application, they also permitted Rajaratnam's lawyer to argue for double her allotted time.

If the appeal is successful, it will have far-reaching implications for the sprawling web of Galleon-related insider trading trials of the past two years, all of which derived from wiretap evidence. If Rajaratnam's conviction is vacated because of a tainted wiretap, the government may be forced to retry not only the *Rajaratnam* case, but also possibly the related cases against Zvi Goffer and Rajat Gupta, all without its powerful wiretap evidence.<sup>15</sup>

## THE GUPTA SAGA

With Rajaratnam's criminal conviction winding its way through the appellate process, attention turned to Rajat Gupta. Late in 2011, DOJ indicted

Gupta on charges of conspiracy and securities fraud, thereby ensnaring the most well-known corporate executive to date into Operation Perfect Hedge and confirming that he was the man widely speculated to be the government's "big fish."<sup>16</sup>

The Gupta trial was particularly noteworthy because the government's case against Gupta lacked two key elements of its case against Rajaratnam: (i) there were no wiretapped conversations directly involving or explicitly mentioning Gupta; and (ii) the government could not point to any tangible benefit to Gupta from his participation in the alleged conspiracy.

Early in 2012, Gupta followed Rajaratnam's lead in seeking to exclude four wiretapped conversations the government sought to use against him at trial. He pressed the same arguments for suppression before Judge Rakoff that Rajaratnam had made before Judge Holwell, and met with the same result: Judge Rakoff allowed the government's wiretap evidence.<sup>17</sup>

Absent any recordings of Gupta himself, at trial the government offered conversations between Rajaratnam and others to support its theory that Gupta breached his fiduciary duties and passed material inside information regarding Goldman Sachs to his friend, Rajaratnam.<sup>18</sup> To take one example, the government played a recording of an October 2008 conversation between Rajaratnam and a Galleon trader in which Rajaratnam said, "I heard yesterday from somebody who's on the board of Goldman

Sachs that they are going to lose \$2 per share.”<sup>19</sup>

Gupta’s lawyers also sought to sow doubt based on the lack of any direct recordings or explicit mention of Gupta, suggesting there may have been another Goldman Sachs insider connected to Rajaratnam who could have been the source of the Goldman information.<sup>20</sup> Gupta’s lawyers sought to introduce purported recordings of the other Goldman executive passing tips to Rajaratnam, but the tape-recorded conversations were excluded by Judge Rakoff as inadmissible hearsay.<sup>21</sup> Unable to offer evidence to support its theory of an alternative tipper, the defense could not capitalize on the lack of Gupta’s own voice on tape-recorded conversations. Gupta’s defense also highlighted the government’s inability to show that Gupta received any tangible benefit from passing tips on to Rajaratnam.

The defense focused heavily on the fact that the government’s case was vastly circumstantial. For example, the government did not introduce any direct evidence that Gupta tipped Rajaratnam about Warren Buffett’s \$5 billion investment in Goldman Sachs. Rather than presenting recordings, the government presented the record that Gupta had participated in a Goldman Sachs Board meeting on September 23, 2008, where Buffett’s upcoming investment was discussed. That same afternoon, Gupta made a call to Rajaratnam that ended at approximately 3:55 pm. There is no record of what was said between Gupta and Rajaratnam

on that call. Before the market closed that day—and before Goldman Sachs made the announcement of the Buffett investment—Rajaratnam purchased approximately \$40 million worth of Goldman Sachs stock. At trial, Rajaratnam’s assistant testified that on September 23, 2008 Rajaratnam did not receive any calls on his personal line between 3:00 pm and 4:00 pm other than Gupta’s call. At summation, Gupta’s lawyer emphasized the lack of concrete evidence: “With all the power and majesty of the United States government, they found no real, hard, direct evidence. . . . As they say in that old commercial, where’s the beef in this case?”<sup>22</sup>

The defense, however, was not able to overcome the strong circumstantial evidence presented to the jury and, on June 15, 2012, Gupta was convicted of one count of conspiracy to commit securities fraud and three counts of securities fraud.<sup>23</sup> The government’s successful prosecution of Gupta despite the lack of direct evidence may serve to embolden future prosecutions. However, the defense efforts were not entirely in vain and likely contributed to Gupta’s relatively light sentence and reasonable prospects on appeal.

Following Gupta’s conviction, the government requested a Guidelines sentence of 78 to 97 months imprisonment. At the other end of the spectrum, Gupta asked that he be sentenced to no prison time and instead be required to perform community service in Rwanda.<sup>24</sup> In sentencing Gupta, Judge Rakoff sharply criticized the result

dictated by the Guidelines, noting the “bizarre” result of assigning only two points to Gupta based on his abuse of a position of trust, which was, as the court put it, “the very heart of his offense.” By contrast, Judge Rakoff noted that the Guidelines assigned Gupta no less than 18 points based on the “unpredictable monetary gains made by others, from which Mr. Gupta did not in any direct sense receive one penny,” suggesting that Gupta’s arguments about his lack of benefit did not fall on deaf ears.<sup>25</sup>

Judge Rakoff was also swayed by Gupta’s argument that he had “selflessly devoted a huge amount of time and effort to a very wide variety of socially beneficial activities” and that he did so “without fanfare or self-promotion.”<sup>26</sup> The Guidelines sentence, Judge Rakoff ruled, did not “adequately square” with the facts of Gupta’s case. Taking into consideration Gupta’s personal circumstances and other sentencing factors under 18 U.S.C. § 3553, Judge Rakoff ultimately sentenced Gupta to 24 months imprisonment, a short sentence compared to others from the Galleon web who have gone to trial.

Following his conviction and sentence, Gupta sought bail pending appeal, which the district court denied. In a surprising turn of events, the Court of Appeals for the Second Circuit reversed the district court’s denial of bail, allowing Gupta to remain free while he appeals his conviction.<sup>27</sup> The Court of Appeals’ order signals that Gupta has raised non-frivolous issues on appeal that could warrant vacating his

conviction. In addition to Gupta's challenge to the government's use of the Rajaratnam wiretaps against him, he also intends to argue that Judge Rakoff improperly excluded wiretap evidence purportedly pointing to an alternate Goldman tipper, as well as evidence that Gupta and Rajaratnam had a falling out shortly before Gupta allegedly tipped Rajaratnam.<sup>28</sup>

The SEC's parallel case against Gupta is still pending. The SEC is looking to impose a \$15 million penalty on Gupta. Meanwhile, to end 2012, Rajaratnam entered into a consent agreement with the SEC to resolve the SEC's case against him for the Gupta-related trades. Rajaratnam agreed to pay \$1.45 million.<sup>29</sup>

Gupta's appeal of his criminal conviction will be expedited and, together with Rajaratnam's pending appeal, places the insider trading spotlight firmly on the Second Circuit as we enter 2013.

## COOPERATORS SENTENCED

Throughout 2012, a large cohort of the cooperating witnesses in bringing down Rajaratnam and Gupta was sentenced. Of the eight Galleon-related cooperators sentenced this year, all avoided prison sentences. Michael Cardillo, a former Galleon trader who pleaded guilty to one count of conspiracy and one count of securities fraud, faced up to 20 years' imprisonment.<sup>30</sup> But Cardillo provided cooperation that the government called "extraordinary in terms of its extensive impact, in terms of its breadth and scope, in terms of its timing, in terms of its direct result in convictions of multiple

individuals, and in terms of his testimony during two of the most high-profile trials in insider trading cases in history," namely the *Gupta* and *Goffer* trials.<sup>31</sup> For this cooperation, Cardillo received three years' probation, but not a day in jail.<sup>32</sup>

Likewise, Adam Smith, David Slaine, Rajiv Goel, Anthony Scolaro, Anil Kumar, and Franz Tudor—who were sentenced by five different district court judges—all received sentences of probation for their efforts to assist the government.<sup>33</sup> Only Gautham Shankar received more, when Judge Sullivan sentenced him to six months' home confinement.<sup>34</sup> As the Galleon tale winds down, one thing is clear: cooperators were rewarded handsomely.

## EXPERT NETWORK CASES

As we noted in last year's Review, by the end of 2011, the government had charged 18 individuals in the expert network cases—two of whom were convicted after jury trials, while the remaining 16 entered guilty pleas. 2012 showed no sign of abatement in the government's aggressive pursuit against the illegal use of expert networks.

The year started off with predawn arrests on January 17 of four individuals from hedge funds associated with the expert network cases: Diamondback Capital Management LP, Whittier Trust Co., and Sigma Capital Management, a division of SAC Capital Advisors LP. The same day the government also unsealed

charges against three other individuals. Five of the seven individuals have since entered guilty pleas and the two that fought and went to trial, Anthony Chiasson and Todd Newman, were convicted exactly 11 months after the date of their arrests. Also in December, Diamondback Capital Management announced it would close after investors sought redemptions of \$250 million in capital.

In 2012, the expert network cases were not contained to the "circle of friends" of the seven defendants mentioned above. Throughout the year, additional and unrelated individuals entered guilty pleas to insider trading charges involving expert networks. For example, last summer, Tai Nguyen, the president and sole employee of Insight Research LLC, entered a guilty plea admitting that he provided confidential earnings information regarding biotech company Abraxis Inc. to two hedge fund managers—both of whom had already entered pleas of guilty to insider trading in 2011. Likewise, John Kinnucan, founder of Broadband Research LLC and an outspoken thorn in the side of the FBI and DOJ,<sup>35</sup> pled guilty to conspiracy and securities fraud charges based on his having passed on to clients material nonpublic information he had obtained from employees of publicly traded companies.

And then, just as it appeared the existing expert network cases were winding down, in November the U.S. Attorney's Office for the Southern District of New York and the SEC announced the filing of what they termed

the largest insider trading case ever against Mathew Martoma, a portfolio manager at CR Intrinsic Investors, LLC, an affiliate of SAC Capital. The government alleges that Martoma met Dr. Sidney Gilman through Gerson Lehrman, one of the first and most well-established expert network firms. According to the allegations, Dr. Gilman provided Martoma with inside information about disappointing clinical trial results for an Alzheimer's drug being jointly tested by pharmaceutical companies Elan Corporation and Wyeth. The government alleges that Martoma liquidated his fund's long positions in Elan and Wyeth before the clinical trial results became public and which caused both stocks to tumble. As a result, the government contends that the trading profits and losses avoided totaled over \$276 million. Martoma has asserted his innocence and has vowed to fight the government's charges. Dr. Gilman entered into a non-prosecution agreement with DOJ and is alleged to be cooperating with the regulators. The government's desire to develop a case against Martoma's former boss Steve Cohen, the head of SAC Capital, perhaps explains the unusual step of granting a total pass to Dr. Gilman, the tipper of the alleged nonpublic information and therefore the but-for cause of any alleged subsequent misconduct.

## APPEALS AND TRIALS

### ON APPEAL FROM 2011 TRIALS

The two defendants in the expert network cases who went to trial and were convicted in 2011 filed appeals in 2012.

As we reported last year, Winifred Jiau, a former Primary Global Research LLC consultant, was the first defendant to be convicted of insider trading in connection with the expert network investigations. Jiau was convicted quickly by a jury after hearing ample evidence, including the testimony from Noah Freeman, a former portfolio manager at SAC Capital Advisors, who himself entered a plea of guilty to insider trading. Freeman testified that Jiau tipped him about results and trends at chipmakers Marvell Technology and Nvidia Corp. During the trial, Freeman testified that Jiau "provided us with almost the complete financial results before they were announced."<sup>36</sup> In return, Freeman and other hedge fund managers paid Jiau more than \$200,000 and gave her restaurant gift certificates, iPhones, and a dozen lobsters.

Judge Rakoff sentenced Jiau to four years in prison and ordered her to begin her sentence immediately. Jiau made a number of *pro se* motions before Judge Rakoff, including asking that she be freed while her appeal is pending. Judge Rakoff rejected Jiau's request and said he would no longer accept legal requests by Jiau without a lawyer's assistance. Judge Rakoff denied her request for bail pending appeal, noting that "[n]one of Jiau's other contentions are sufficiently likely to result in reversal, a new trial or a reduced sentence."<sup>37</sup> Since Judge Rakoff's denial, Jiau filed a *pro se* brief in support of her appeal alleging that her counsel did not adequately represent her at trial and that her sentence is disproportionate to those given to others convicted of insider trading.

In the second trial in 2011, James Fleishman, a former sales executive at Primary Global, was also convicted of insider trading within hours of the case being turned over to the jury. The case against Fleishman was unique in that Fleishman was a salesman recruiting clients for Primary Global, but he was not directly involved in working with the experts. Therefore, it seemed it would be harder for the government to establish that Fleishman was privy to misappropriated information. At trial, the government relied heavily on cooperating witnesses, such as Mark Anthony Longoria, a consultant for Primary Global who testified that he provided material nonpublic information to Fleishman's customers. The government alleged that Fleishman deliberately connected the insider with his customers knowing that the insider would provide the improper information. Fleishman was sentenced to 2.5 years in prison.

In his appeal, Fleishman argued, among other issues, that the jury was not properly instructed that the guilty pleas by several testifying cooperating witnesses (who were allegedly part of the scheme in which Fleishman participated) should not have been considered substantive evidence of Fleishman's own guilt. Fleishman further contended that Judge Rakoff should have permitted him to introduce evidence that he had been approached by the FBI and offered a cooperation deal, but he turned it down because he felt he was innocent. The government countered that Fleishman's lawyers failed to object timely to

Judge Rakoff’s jury instructions as they were given. In January 2013, the Court of Appeals for the Second Circuit heard Fleishman’s arguments and affirmed the district court’s final judgment of conviction.

### **PERFECT TRIAL RECORD CONTINUES**

Given the tremendous success the U.S. Attorney’s Office for the Southern District of New York has recently had in prosecuting insider trading cases, each successive guilty verdict no longer seems newsworthy. However, the convictions of Chiasson and Newman are noteworthy in that the government relied mostly on “old fashioned” evidence at the trial. Unlike the other recent insider trading cases, the government did not have recordings of the defendants. Without wiretap evidence, the government relied heavily on cooperating witnesses.

Also notable is that, while the government called the two defendants members of a “close-knit criminal club,”<sup>38</sup> at trial there was no evidence of direct dealings between the two of them. Rather, the government was able to obtain a conviction against the two defendants on charges of conspiracy based on the wider interconnected web of tippers and recipients who passed along material nonpublic information. As a result of having been found to be part of a larger conspiracy, Chiasson’s gains and losses avoided may be attributable to Newman and vice-versa, even if one is unaware of the other’s trading activity. As such, Newman may be liable for Chiasson’s gains—which were

much larger than his own.

Newman and Chiasson are to be sentenced by Judge Sullivan sometime this year. It is widely expected that both defendants will appeal their convictions. As they did in front of Judge Sullivan in their unsuccessful motions for separate trials, we expect one of the issues on appeal to be based on the argument that the evidence did not show that they were part of a single purported conspiracy.

### **WHAT TO EXPECT NEXT**

As we noted in last year’s Review, in connection with the *Fleishman* case, the government represented that it was still sifting through evidence—including wiretap information on at least 50 hedge funds. In 2012, the government delivered on its promise by bringing new cases, but the level of enforcement activity did not involve 50 hedge funds. The question remains, what else is out there?

The inclusion of “Portfolio Manager A”—widely understood to be Steve Cohen—in the *Martoma* criminal complaint may have been a signal from the government about the focus of its efforts. To date, neither Cohen nor SAC Capital has been charged with any wrongdoing related to insider trading. SAC Capital has publicly disclosed that it received a Wells Notice from the SEC in November related to insider trading. It remains to be seen whether anything will come of the government’s pursuit of Cohen.

## **WHAT DOES COOPERATION BUY YOU?**

Cooperation. The word is filled with meaning for enforcement professionals. SEC and DOJ profess to weigh it heavily when making charging and sanctioning decisions. Courts claim to balance it carefully when making sentencing decisions. But does cooperating really yield tangible benefits for insider trading defendants? Or does it make sense to “roll the dice” and go to trial? Unsurprisingly, the answer is highly fact-specific. But, our analysis of insider trading cases in 2012 and earlier years provides interesting information that may inform the calculus.

### **WHAT DOES IT MEAN TO COOPERATE?**

This is an important gatekeeper question. Despite detailed frameworks for evaluating cooperation, the SEC and DOJ have provided precious few specifics for insider trading defendants. The SEC engages in a four-part analysis to gauge an individual’s cooperation, but at the time of an investigation a potential defendant can control only a single prong: the assistance provided.<sup>39</sup> Here, the SEC factors in both the value and the nature of the cooperation, considering issues like the timeliness and voluntariness of the cooperation and the benefits to the SEC of the cooperation. DOJ likewise may weigh an individual’s cooperation when making charging and sentencing recommendations.<sup>40</sup> The Guidelines, akin to the SEC’s policies, also focus on the timeliness

and comprehensiveness of the defendant's assistance.<sup>41</sup>

Timely cooperation is difficult to provide in an insider trading matter. Investigations frequently begin mere days (if not hours) after the suspicious trading, often without potential defendants being any the wiser. Absent advance self-reporting of insider trading, timeliness thus may best be gauged from the moment of first contact by the authorities. One case filed in September 2012 demonstrates this redefined timeliness. In that matter, the SEC credited Kenneth F. Wrangell with "promptly offer[ing] significant cooperation."<sup>42</sup> When contacted about his trading in October and November 2010 (the SEC does not identify when the contact occurred), Mr. Wrangell "provided truthful details acknowledging his own trading and entered into a cooperation agreement that resulted in direct evidence being quickly developed against" two other defendants. The other defendants consisted of a company insider who told his friend and business associate about an impending merger of the company, who then told his golfing partner Mr. Wrangell. But this sort of complete capitulation "at the outset of the investigation" seems to be an anomaly.

Most defendants, therefore, likely may find that their cooperation is most significantly gauged by the value and comprehensiveness of the assistance that they provide. No cooperator to date appears to rival David Slaine in this area. Slaine, who first began cooperating with the FBI in mid-2007, wired up and recorded several of his own conversations

with Craig Drimal, which themselves uncovered the Zvi Goffer insider trading network. Slaine's taped conversations with Drimal and involving Goffer were the basis for the Rajaratnam wiretap warrant application. Slaine therefore was credited with securing wiretapped conversations of Rajaratnam. Slaine also received credit for bringing in additional cooperators, including Gautham Shankar and Thomas Hardin.<sup>43</sup> In support of Slaine's bid for a lenient sentence in early 2012, Assistant U.S. Attorneys Andrew Fish and Reed Brodsky called this cooperation "nothing short of extraordinary."<sup>44</sup>

Entities can cooperate as well. Diamondback Capital Management, for example, settled with both the SEC and DOJ one week after charges were announced.<sup>45</sup> Diamondback secured a non-prosecution agreement with DOJ based on, among other things, its "prompt and voluntary cooperation upon becoming aware of the government's investigation," its voluntary implementation of remedial measures, and provision of a "detailed Statement of Facts to the U.S. Attorney's Office setting forth the wrongful conduct of two of its employees." As part of its settlements, Diamondback also agreed to disgorge \$6 million, and paid a penalty of one-half that amount. The SEC praised the firm's substantial assistance, "including conducting extensive interviews of staff, reviewing voluminous communications, analyzing complex trading patterns to determine suspicious trading activity, and presenting the results of its internal investigation to

federal investigators." Notably, however, Diamondback's pact with the SEC does not include typical language indicating that the firm "neither admits nor denies" any wrongdoing—a result of the SEC's change in policy when settling with defendants involved in parallel criminal matters. And yet, cooperation was not sufficient to save Diamondback from having to shut its doors last year.

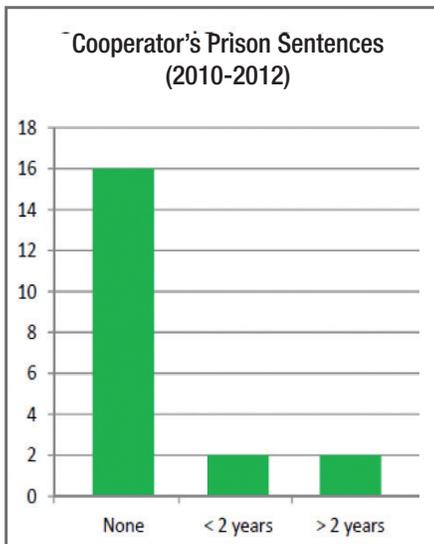
### **WHAT DO DEFENDANTS GET FROM COOPERATING?**

The possible benefits for early or significantly helpful cooperation are twofold: a reduced (or no) prison sentence and/or a reduced fine/penalty.

### ***PRISON (OR SUPERVISED RELEASE) HAPPENS***

In many instances, cooperating may provide a "get out of jail" card. For his extraordinary cooperation, for example, Mr. Slaine was sentenced in 2012 to probation and no prison time. More broadly, a review of sentences over the last three years reveals that cooperators routinely receive supervised release rather than prison. Of the 20 cooperators sentenced in the last three years, 16 of them received no prison time, and only two cooperators received prison time of more than two years.

On average, cooperating insider trading defendants received a sentence of around six months—only 26% of the average prison term imposed after plea bargains from non-cooperating defendants (22 months) and a mere 11% of the sentences imposed on defendants who went to trial (56 months). Moreover, cooperators received lower sentences than

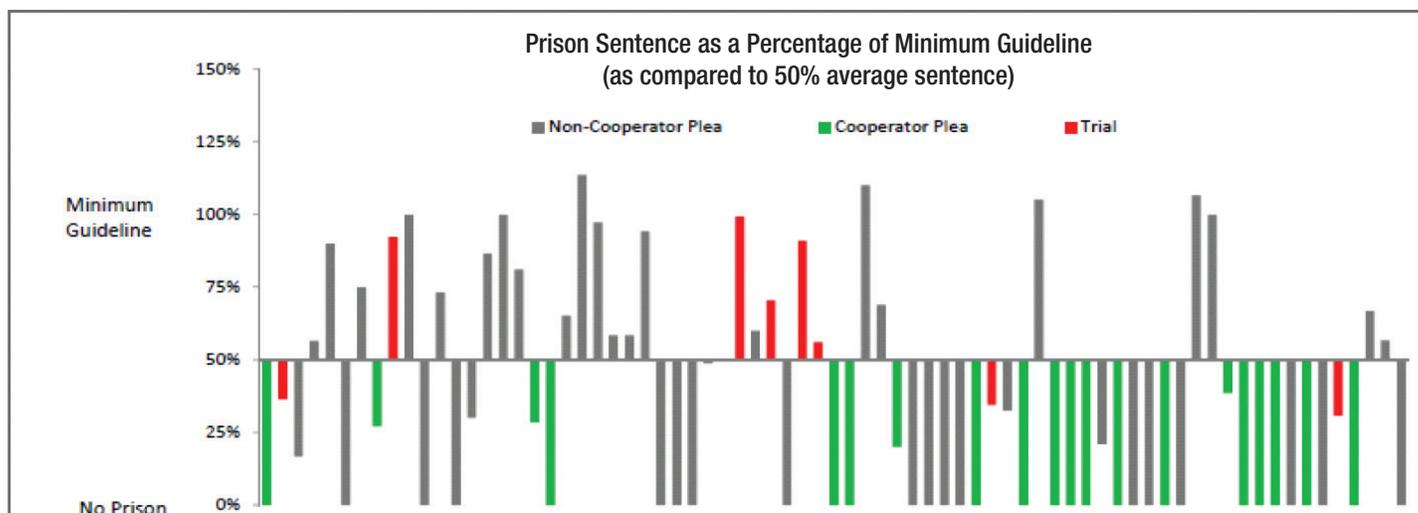
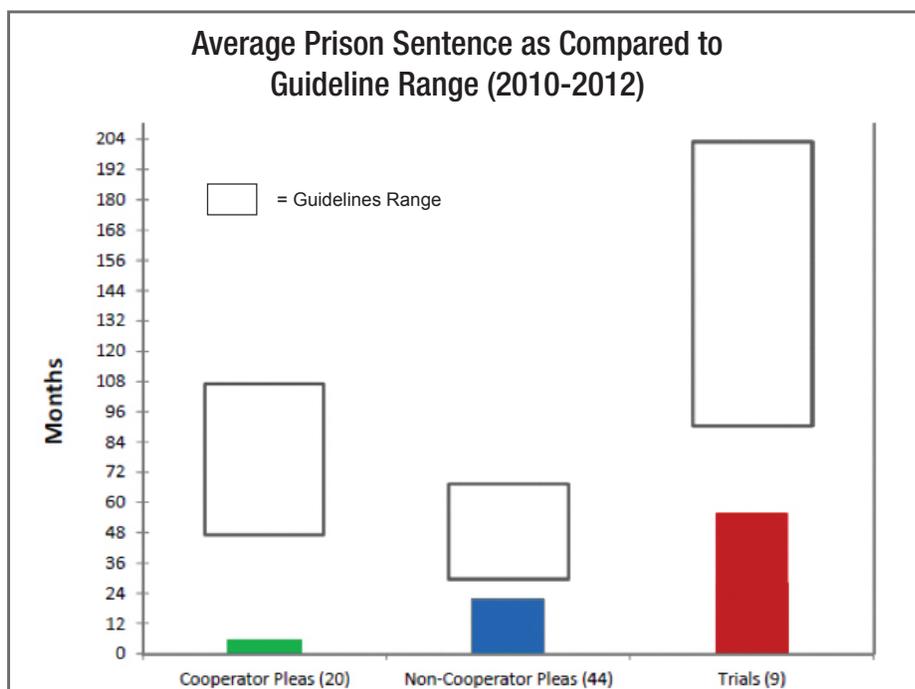


sentences equal to 62% of the minimum guidelines. The graph in the middle of the page illustrates these dramatic benefits to cooperators as compared to the lack of any clear benefit from other pleas.

While there were several large insider trading cases and high-profile defendants over the past three years, they do not skew the averages or conclusions to be drawn. The chart at the bottom of the page illustrates the extent to which each

insider trading sentence from 2010-2012 deviated from the average sentence (which was half the minimum guideline).<sup>46</sup> We clearly see for cooperators (in green) the consistently below-average sentences typically involving no prison time. Also, non-cooperators achieve mixed results, the range of outcomes is much wider, for better and worse, among those who enter pleas than it is among those who go to trial.

others who entered pleas even though they faced notably higher sentencing guidelines. In fact, non-cooperating plea bargaining defendants met with the longest sentences relative to their sentencing guidelines. Specifically, cooperators received an average sentence equal to only approximately 12% of the minimum recommended by the Guidelines. In contrast, non-cooperating plea bargaining defendants received sentences equal to 73% of the minimum guideline, and defendants who went to trial received average

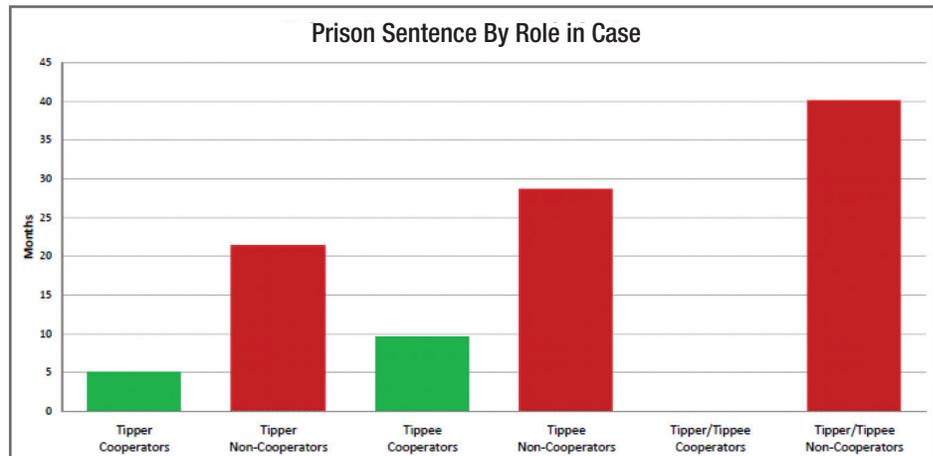
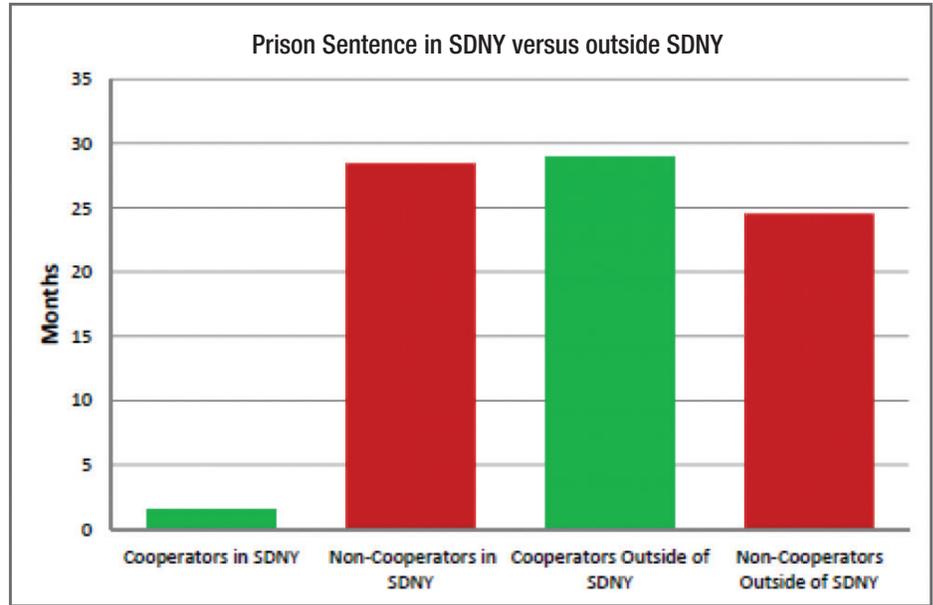


Further analysis reveals that venue matters when choosing whether to cooperate. In the Southern District of New York, where for decades the majority of criminal insider trading cases have been brought, cooperators received lower overall sentences, and in many cases no prison time. Interestingly, cooperators outside of the Southern District of New York fared less well than non-cooperating defendants. And non-cooperators fared relatively equally both within and without the Southern District of New York.

Cooperators also received reduced overall sentences regardless of their role in the cases (tipper, tippee, or both). Interestingly, cooperating defendants who both tipped and traded fared best comparatively, perhaps due to the valuable insight that they could provide to DOJ. Sentences of non-cooperators appear to reflect the more general viewpoint about insider trading: tipping might not be good, but trading is worse, and doing both is worse still.

**PENALTIES/FINES HAPPEN, OR DO THEY?**

Cooperation may also yield a financial benefit for defendants, albeit perhaps not as significant as compared to the benefits received in sentencing. While cooperators are still required to disgorge any ill-gotten gains, many avoid civil penalties. For example, in the expert network case *SEC v. Longoria* commenced in 2011, numerous defendants pled guilty in their criminal cases and paid disgorgement in their SEC cases, but none paid a civil



penalty, expressly due to their cooperation.<sup>47</sup>

Even where penalties are not avoided entirely, they are likely to be reduced. Stressing that Wrangell’s immediate cooperation “saved the SEC time and resources,” the SEC nonetheless required disgorgement of his ill-gotten gains (\$42,521.55) plus prejudgment interest, and a civil penalty of approximately \$11,000, roughly a quarter of what he otherwise would have likely owed had he paid the

standard “one time” penalty equal to his alleged trading profits.<sup>48</sup> The relatively small amount of the reduction in penalty begs the question of whether Wrangell received much of a benefit from cooperating with the SEC.

Moreover, while avoiding or reducing penalties, none of these cooperators was able to save themselves from a fraud injunction and significant negative publicity. It is thus not always clear that the reduced civil penalty itself will be worth the costs of cooperating.

A more comprehensive view of the data from 2012 tells a similar story. The SEC commonly seeks a civil penalty equal to disgorgement. Because many defendants receive reduced penalties, however, the average penalty for 2012 was approximately 66% of the disgorged amount.<sup>49</sup> The following chart reflects the deviation from that average of each insider trading penalty assessed in 2012. Again, it is clear that cooperators routinely pay substantially lower, or no, added penalty.

Venue did not significantly affect the civil penalty benefits received by cooperators in 2012. Defendants cooperating with the SEC fared equally well, both within and without the Southern District of New York. Nor did a cooperating defendant's role in the case (tipper, tippee, or both) generally result in a difference.

Cooperators likewise, on average, received lower criminal fines. Defendants cooperating with DOJ received an average criminal fine of \$38,375 from 2010 to

2012, whereas non-cooperating defendants received an average fine of \$212,773, more than five times the size of the average fine for a cooperator.

**STILL A DIFFICULT PATH**

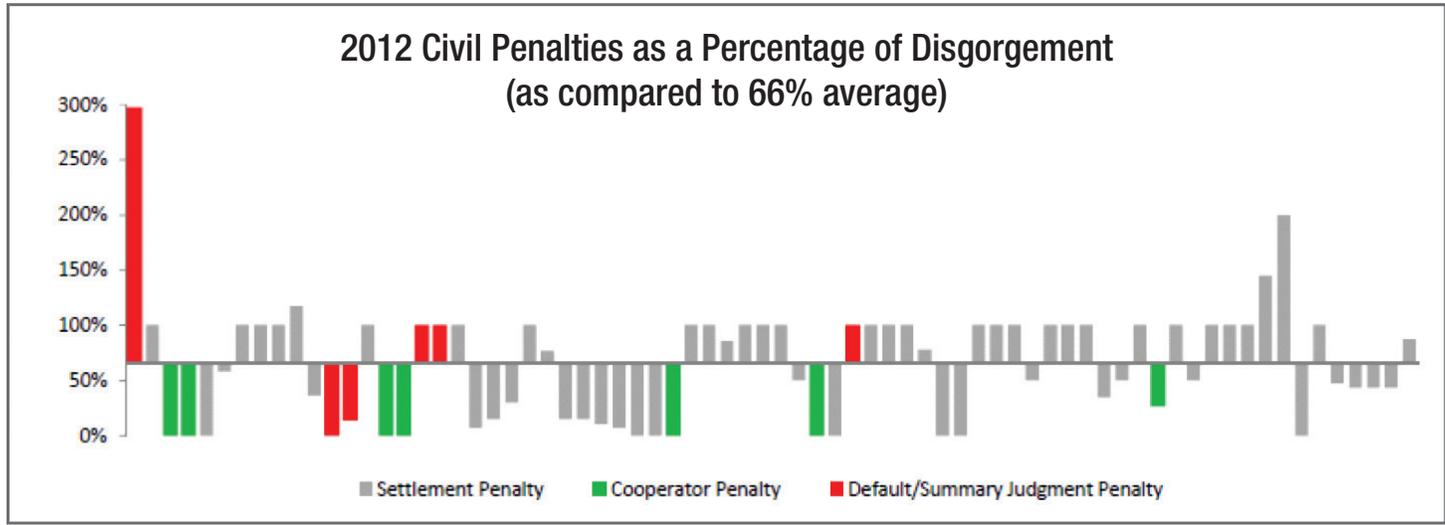
Cooperation is not all upside. A civil injunction seems a given, an order of disgorgement equal to the ill-gotten gains is an absolute, a felony conviction has many adverse consequences, and reputational damage may be hard to erase. Individuals may have to find themselves a new line of work, since they may also be barred by the SEC from working in the securities business. Likewise, it seems almost routine now to ask cooperators to record conversations with their friends and colleagues. And cooperators should expect that they may be deposed in civil suits and provide trial testimony in civil and criminal cases.

Even cooperating businesses may suffer debilitating reputational and business harms from insider trading cases involving their employees. Despite its

significant cooperation, as stated above, Diamondback informed investors in December 2012 that it would close in light of significant redemption requests. At least three other firms (Level Global Investors, Barai Capital Management, and Loch Capital Management) likewise shut down after their employees were implicated in insider trading cases.

**COOPERATION: SUMMING UP**

Based on cases in the past three years, cooperation with the U.S. Attorney's Office for the Southern District of New York still yields significant benefit. Cooperators on average received lower overall sentences than non-cooperators—both those who pled without cooperation and those who went to trial. As has been true for decades, cooperators were far more likely than non-cooperators in insider trading cases to get a sentence that included no prison time at all.<sup>50</sup> The benefits of cooperating outside of New York are less clear, as non-cooperating defendants appear to have received similar



(if not slightly lower) sentences than cooperators. Whether to cooperate outside of the Southern District of New York may come down to an evaluation of the costs of cooperation (are they seeking Slaine-type active cooperation, or something more manageable?) and the track record of the local U.S. Attorney's Office in delivering on the cooperation agreement's promise to bring the "nature and extent" of the cooperation to the attention of the sentencing judge. There appears to be little question that cooperating with the SEC will result in a reduced civil penalty. Yet the civil penalties imposed through default or summary judgment are generally not dauntingly high, and the SEC's success rate litigating is nowhere near the United States Attorney's Office for the Southern District of New York's recent unbeaten streak.

## GLOBAL TRADING, GLOBAL ENFORCEMENT

As the global economy continues to expand, so too does the potential for global insider trading. Worldwide regulators rose to the challenge in 2012. In some ways, it was a banner year and likely a preview of efforts to come.

### UNITED STATES

Domestic agencies have long pursued insider trading cases with multi-national elements, and 2102 was no different. Actions involving Chinese (or Hong Kong) residents and securities dominated headlines. The SEC froze more than \$56 million of

alleged insider trading gains made by Chinese or Hong Kong defendants (and entities that they controlled) in three cases.<sup>51</sup> The SEC extracted settlements from at least 14 defendants in five cases involving trading the securities of Chinese entities, with disgorgement of more than \$25 million and civil penalties of more than \$32 million.<sup>52</sup> And in at least one international insider trading matter, DOJ extracted a \$16 million criminal forfeiture agreement.<sup>53</sup> Further complicating matters, the cases involved cross-border transactions, and witnesses and documents located abroad.<sup>54</sup> Yet the SEC proclaimed that an action against U.S. individuals for alleged insider trading in China-based banks taught "the painful lesson that illegal trading offshore is not off-limits from U.S. law enforcement."<sup>55</sup>

While China cases generated headlines, U.S. regulators looked beyond Asia. For example, the SEC charged two Brazilian citizens (one living in Miami) for trades in advance of a private equity buyout of a fast food company.<sup>56</sup> In a separate case, a Swiss individual, and a British Virgin Islands company controlled by the Swiss defendant through a Cyprus trust, settled charges relating to options purchased in a Swiss account before the public announcement of European Union approval for a medicine.<sup>57</sup> And in a third case, a Paris-based doctor who worked in an expert network, and who tipped a fund manager about clinical trials (allegedly avoiding \$30 million of losses), was sentenced to time served and three years supervised release, as

well as monetary sanctions.<sup>58</sup>

Yet U.S. regulators' global enforcement efforts did not proceed without their challenges. Gathering evidence abroad is difficult, slow, and sometimes unsuccessful. In addition, courts may not consistently sanction alleged spoliation. Both the SEC and DOJ suffered dismissals due to these issues.<sup>59</sup> One voluntary dismissal motion explained that "[d]espite submitting more than 30 requests to foreign regulators and prosecutors in five different countries," the SEC "has been unable to speak to Swiss-based insiders." Coupled with defendants' allegedly incomplete productions, the SEC was unable to connect the traders to an insider.<sup>60</sup> Indeed, in a similar case only a few months earlier, a court granted summary judgment to a Spanish insider trading defendant because the SEC could not show either a connection to an insider or spoliation from the loss of a laptop.<sup>61</sup>

### UNITED KINGDOM

Information sharing among regulators on both sides of "the Pond" is established and common. Yet in 2012, DOJ reported that for "the first time," it "coordinated a criminal investigation with both the SEC and the Financial Services Authority in London" (FSA).<sup>62</sup> In this case, the U.S.-based wife of a U.S.-based partner in a U.S. accounting firm allegedly passed insider information about U.S. securities to her sister in the UK. The sister, her UK-based husband, and his UK-based business partner all traded in the U.S. securities. The SEC and

DOJ both pursued the tipper (the accountant's wife), obtaining an 11-month prison sentence and a \$1 million fine.<sup>63</sup> The FSA pursued the sister and partner, obtaining prison sentences of 10 months each. The FSA obtained a prison sentence of four years, as well as additional sanctions, against the husband.<sup>64</sup>

The FSA was busy on its own as well. It won eight insider dealing convictions in 2012 (for a total of twenty since March 2009). This is an impressive record for an island one-fifth as populous as the U.S., albeit nowhere near the level of enforcement activity as compared to the U.S.<sup>65</sup> Nevertheless, this was a year of insider dealing enforcement superlatives for the FSA: The agency secured its largest confiscation (disgorgement) orders (total of approximately £2.2 million against three individuals),<sup>66</sup> its longest prison sentence (three years and six months),<sup>67</sup> and its second-largest fine (£3,638,000 against a U.S. hedge fund trader, and another £3,650,795 against his firm).<sup>68</sup>

The FSA also brought multiple actions against insider dealing rings, any one of which might lay claim to the FSA's "most complex" case ever. One involved traders placing spread bets on price movements based on information obtained from the printing rooms of large investment banks.<sup>69</sup> And multiple charges arose out of Operation Tabermula, the "largest and most complex insider dealing investigation to date," jointly run by the FSA and Serious Organized Crime Agency.<sup>70</sup>

Nor did the FSA shy away from asserting aggressive liability theories. One case, for example, involved alleged inside information learned during a telephone call about a contemplated fundraising. Yet the defendant expressly refused to sign a confidentiality agreement and participated in the call on a non-"wall crossed" basis.<sup>71</sup> The FSA struggled to identify specific inside information communicated during the call, "accepted that [the defendant's] trading was not deliberate, because he did not believe that it was inside information," found that the defendant "did not deliberately or recklessly contravene the regulatory requirements," and agreed that the defendant cooperated with the investigation and had no prior disciplinary history.<sup>72</sup> Similarly, the FSA concluded that the banker who spoke during the call did not deliberately or recklessly disclose inside information, and that the banker did not stand to gain any financial benefit from a disclosure.<sup>73</sup> Nevertheless, the FSA imposed its second-largest fine ever against the trader (and his firm), and sanctioned the banker as a tipper. Similarly, in an unrelated case, the FSA aggressively sanctioned a defendant despite finding that he "did not act without honesty or integrity in making the disclosure" and that he did not intend or expect that the tipped information would be misused.<sup>74</sup>

## EUROPEAN UNION

Other European countries also actively pursued insider trading this year. Multiple

agencies opened new cases in 2012. Prosecutors in Munich conducted 53 raids in Germany as part of a stock fraud, market manipulation, and insider trading probe. They also coordinated with other authorities to conduct an additional 33 raids in other countries, for a grand total of 86 raids in one case.<sup>75</sup> And French prosecutors announced the start of a preliminary investigation into insider trading and share manipulation by LVMH Group regarding its acquisition of shares in Hermes International SCA.<sup>76</sup>

Several notable cases were resolved this year in the EU. In Switzerland, for example, the report of an internal investigation into potential insider trading by high-ranking officials at the Swiss National Bank found no evidence of wrongdoing.<sup>77</sup> Separately, French authorities issued fines of more than 6 million euros (\$8 million) against six individuals and several firms (ranging from 60,000 euros to 2 million euros) for trading in a French company's shares based on knowledge about an impending offer by a British company.<sup>78</sup> And perhaps ending a decade-long fight to overturn George Soros' French insider trading conviction, the EU Grand Chamber refused to hear an appeal from a 4-3 decision of the European Court of Human Rights upholding the conviction.<sup>79</sup>

EU insider trading enforcement may well intensify. In April, the European Securities and Markets Authority reported on insider trading enforcement disparities among member states.<sup>80</sup> Among other things, the report highlighted significant disparities in the fines imposed

on individuals (which ranged from \$83 to \$7.8 million), the fines imposed on companies (which ranged from \$3,333 to \$2.35 million), and the length of imprisonment (which ranged from one year to three years). As a result, a bill introduced in the European Parliament in October would impose conformity in prison terms for insider trading (requiring maximum terms of no less than two or five years, depending on the charge).<sup>81</sup>

## ASIA

Regulators in Asia also focused on insider trading in 2012. In July, a Japanese financial services firm announced that its employees may have provided clients with confidential information about three separate share offerings. Amidst criticism about the entity's internal controls by Japan's Financial Services Agency (JFSA), the firm's CEO resigned and the Tokyo Stock Exchange assessed a 200 million yen (\$2.5 million) penalty—the country's highest securities fine ever. The firm has also disclosed there is a separate JFSA investigation in connection with the firm's relationship with a hedge fund that may have traded on confidential information inadvertently provided to it by the firm.

And more stringent actions in Japan may be forthcoming. In May, the JFSA announced that it is considering enhancing existing insider trading laws. Currently, Japan's laws penalize those who trade on inside information, but not tipsters. Oft criticized as overly lax, the JFSA is reportedly now considering penalizing

tipsters, as well as raising the fines imposed for insider trading violations.<sup>82</sup>

In 2012, the Securities and Futures Commission (SFC) in Hong Kong vowed to “pursue insider dealing using the full spectrum of remedies available to us.”<sup>83</sup> But sending mixed messages, the Hong Kong Court of Appeal shaved one year off what had been the longest prison term imposed since the country criminalized insider dealing in 2003.<sup>84</sup> Regardless, the banker, who tipped his wife about a Hong Kong company's stock when helping to advise the company about acquiring oil-field assets in China, still received a six-year prison sentence, as well as a HK\$1.7 million fine (reduced from HK\$23.3 million).

Separately, and on a lighter note, a Hong Kong court dealt a fatal blow to the potential defensive use of a poor memory and a liquid lunch. A former director received five months in prison for purchasing shares in his own company after hearing about an urgent board meeting to discuss a potential takeover.<sup>85</sup> The Court specifically rejected the director's defenses that “he had forgotten he was an independent non-executive director” and that “he was intoxicated.”<sup>86</sup>

Finally, Monetary Authority of Singapore (MAS) sanctioned an employee who, when working on a proposed acquisition by his employer's subsidiary, purchased over-the-counter contracts for difference (CFDs) relating to the potential target company's shares, which traded on the Toronto Stock Exchange and the

Australian Securities Exchange, as well as CFDs relating to the acquiring company's shares, which traded on the Hong Kong Stock Exchange. MAS declared that the case “demonstrates the resolve of MAS in pursuing insider trading perpetrators, including those residing overseas, or who trade in over-the-counter CFDs.”<sup>87</sup>

While SEC and DOJ actively pursue insider trading cases here in the United States, global companies and individuals residing outside the U.S. also need to be aware that agencies worldwide are following the U.S. regulators' lead in policing and prosecuting insider trading.

## LEGISLATIVE REFORM

### STOCK ACT

As we reported in last year's Review, in 2011 trading by members of Congress attracted a great amount of attention, particularly after *60 Minutes* aired an exposé titled “Insiders” on members of Congress who made profitable securities trades based on information learned on the job on Capitol Hill.<sup>88</sup> “Insiders” focused on then pending bill H.R. 1148, the “Stop Trading on Congressional Knowledge Act” (the “Stock Act”), which was first introduced in 2006. After *60 Minutes* called attention to trading by members of Congress, the Stock Act, which had languished for years with only nine sponsors, all of a sudden had more than 140 sponsors.<sup>89</sup>

Last year, President Obama joined the growing support for the Stock Act. At the 2012

State of the Union Address, Mr. Obama declared: “Send me a bill that bans insider trading by members of Congress, I will sign it tomorrow.”<sup>90</sup> The Stock Act was signed into law on April 4, 2012.<sup>91</sup>

The Stock Act, in part, makes it illegal for members of Congress and staff to buy or sell securities based on certain nonpublic information. It requires members of Congress and government employees to report certain investment transactions within 45 days after a trade and mandates that the information in public financial disclosure reports be made available online. The law also makes clear that members of Congress and staff owe a duty to the citizens of the United States not to misappropriate nonpublic information to make a profit.

After another news exposé, the Stock Act was amended in August 2012 to close a loophole in the law. In June, the Senate Ethics Committee released short guidelines requiring members of Congress and their spouses and dependent children to file reports of certain investment transactions. The House Ethics Committee disagreed, finding that, while members of Congress and their staff were covered by the Stock Act, their spouses and children were not. According to CNN, “both of the lead sponsors of the Senate bill didn’t realize the discrepancy until CNN brought it to their attention. . . .”<sup>92</sup> The August amendment ensures that the same restrictions that apply to members of Congress and their staff apply to their spouses and children. Commenting

on the unanimously passed amendment, New York Senator Kirsten Gillibrand stated: “The intent of this important reform bill was clear from the start, to restore people’s faith in their elected leaders by ensuring we play by the exact same set of rules as every other American. Including family members in our monthly disclosure requirements was an integral piece of restoring that faith, and I am pleased the House will finally join the Senate in conforming to these important new rules.”<sup>93</sup>

In August, the Stock Act also faced its first legal challenge. The American Civil Liberties Union filed a lawsuit in federal court challenging the constitutionality of the law’s requirement for online posting of personal financial information as it applies to nearly 30,000 federal workers other than members of Congress. The ACLU contends that under the Stock Act, any internet user would have unprecedented access to the employees’ (and their spouses’ and children’s) personal financial data. As the lawsuit explains, the online posting of this financial data will cause federal employees and their families “an immediate and irretrievable loss of their most private and confidential financial information, simply because they are public servants.”<sup>94</sup>

The case is still pending, but U.S. District Judge Alexander Williams issued a preliminary injunction in September prohibiting the government “from implementing Section 11 of the STOCK Act to make financial disclosure forms of covered Executive Branch employees or

the information contained in them available on the websites of any agency of the United States or otherwise available on the Internet.”<sup>95</sup> In December, President Obama signed into law a bill extending the deadline for Internet publication of plaintiffs’ personal financial information under the Stock Act to April 15, 2013.<sup>96</sup>

## SENTENCING GUIDELINES

As we reported in last year’s Review, on January 19, 2012, the U.S. Sentencing Commission (the “Commission”) proposed and sought comments on amendments to the federal Sentencing Guidelines (the “Guidelines”) that included tougher penalties for insider trading and other financial institution fraud. The Commission proposed these amendments in response to a directive in the Dodd-Frank Wall Street Reform and Consumer Protection Act to review and amend guidelines applicable to certain fraud offenses to ensure that penalties reflected the serious nature of the crimes, the need for deterrence and prevention, and the effectiveness of prison terms.

The originally proposed amendments to the insider trading guidelines included: (i) a 2-level enhancement for insider trading involving “especially complex or intricate offense conduct pertaining to the execution or concealment of the offense,” and (ii) a 4-level enhancement for sophisticated insider traders who held a position of trust, including, for example, officers and directors of

public companies, and registered brokers, dealers, and investment advisers.<sup>97</sup> These enhancements were meant to increase penalties for defendants who participated in sophisticated and serious insider trading offenses, but did not necessarily realize high gains. The Commission explained the concern that in such cases, the existing guidelines “may not adequately account for the seriousness of the conduct and the actual and potential harms to individuals and markets, because [it] uses gain alone as the measure of harm.”<sup>98</sup>

On April 13, 2012, the Commission promulgated the final amendments. While the final amendments are different from the original proposals, the final guidelines nonetheless accomplish the objectives of the originally proposed amendments and reflect the same inclination toward tougher penalties for insider trading. These amendments took effect on November 1, 2012 and do not apply retroactively.

First, the Commission created a new minimum offense level of 14 (15 to 21 months for defendants without a criminal record) to be used when an offense involves any “organized scheme to engage in insider trading” and the existing gain-based offense level, which starts at 8 (0 to 6 months for defendants without a criminal record), is less than 14. The new minimum offense level will apply to defendants who participate in an insider trading scheme that involves “considered, calculated, systemic, or repeated efforts to obtain and trade on inside information, as distinguished from fortuitous or opportunistic

instances of insider trading.”<sup>99</sup> This means that all participants in an organized scheme regardless of gain will have to contend with an automatic increase of 6 levels from the pre-amendment minimum offense level for insider trading.

Second, the Commission broadened application of the 2-level abuse of trust enhancement to include defendants whose jobs involve “regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or commodities” and were used to “facilitate significantly the commission or concealment of the offense.”<sup>100</sup> Prior to the amendments, the abuse of trust enhancement applied where the defendants’ jobs involved “substantial discretionary judgment that is ordinarily given considerable deference.” Defendants who lack discretionary trading or investment authority—including, for example, certain “gatekeepers” such as hedge fund professionals, investment managers, and lawyers—will now be subject to this enhancement.

It remains to be seen how these amendments—which trigger higher offense levels and recommended prison terms—will affect actual sentences, especially given that judges almost uniformly impose sentences in insider trading cases that are well below the Guidelines range. Given that the Guidelines are not mandatory, the Sentencing Commission may simply be swimming against the tide in making the insider trading Guidelines still harsher.

Judge Rakoff noted at the New York City Bar Association’s white collar summit in May 2012 that the Guidelines were irrational, overly punitive, and too blunt, explaining that “[the Guidelines] ‘are based on the strange notion that a human being and a crime can be broken down to arithmetic.’”<sup>101</sup>

The new minimum offense level for organized schemes, in particular, has the potential to significantly—and perhaps arbitrarily—increase sentences for defendants who played minor roles in more modest or unsuccessful schemes. The increased exposure for these and other defendants accused of insider trading might also result in more leverage for the government, possibly putting more pressure on defendants to cooperate or work out a plea deal.

## **10b5-1 PLANS: NOT NECESSARILY AN EFFECTIVE DEFENSE AGAINST INSIDER TRADING CLAIMS**

Akin to its 2006 Pulitzer Prize-winning article “Perfect Payday,” which started the investigations into the practice of stock options backdating, the Wall Street Journal at the end of last year published an explosive story that will likely increase regulatory scrutiny in 2013 on insider trading and executives’ use of 10b5-1 trading plans.<sup>102</sup>

Since the SEC’s adoption of Rule 10b5-1 more than a decade ago, it has been best practice for executives to enter into

pre-arranged trading plans under Rule 10b5-1(c), because these plans create a built-in protection against insider trading allegations. Under Rule 10b5-1(c), provided that the plan is adopted at a time when the seller has no material nonpublic information, the seller is protected from insider trading liability even if the seller comes into possession of material nonpublic information by the time sales actually occur. Rule 10b5-1 has a general “good faith” requirement—that is, a plan must be entered into “in good faith and not as part of a plan or scheme to evade” the prohibitions of Rule 10b5-1(c).

The Journal analyzed the trading activity of more than 20,000 executives since 2004 who traded their own company’s stock during the week before their companies made a news announcement and found “1,418 executives recorded average stock gains of 10% (or avoided 10% losses) within a week after their trades.”<sup>103</sup> The Journal concluded that, “despite the extensive regulatory framework to prevent insider trading, executives do suspiciously well on their trades in the aggregate.”<sup>104</sup>

Of the executives who did well in trading their own company’s stock, the Journal determined that the majority of the trades were executed pursuant to 10b5-1 plans. For example, the Chief Executive Officer of VeriFone Systems Inc. set up a trading plan in January 2011 and sold nearly \$14 million worth of stock pursuant to the plan in March 2011. In April, the stock started to decline in large part due to DOJ’s announcement that it

would block an acquisition the company was contemplating. Likewise the co-founder and general counsel of Cobalt International Energy sold more than \$13 million of company stock pursuant to a plan days before the company announced it was abandoning an exploratory well it was drilling in Africa, news that caused the stock to tumble close to 40%. According to the company, the general counsel amended his 10b5-1 plan sometime before the sale was executed.

The SEC, DOJ, and many companies themselves have launched investigations in order to determine whether the 10b5-1 plans at issue were improperly modified or amended when the executives were in possession of material nonpublic information. Depending on what the investigations uncover, it may be that 2013 brings a number of insider trading cases arising from trades executed under 10b5-1 plans.

Even if enforcement actions are not forthcoming, the recent scrutiny has sparked calls for regulatory reform. For example, in response to the Journal’s article, the Council of Institutional Investors, a nonpartisan group of public and private pension funds, wrote a letter to the SEC demanding “interpretative guidance or amendments” to Rule 10b5-1 in order to “restor[e] public confidence with respect to purchases and sales of a company’s securities by its insiders.”<sup>105</sup> The Council asked the SEC to consider a number of new guidelines, including: (i) restricting the use of 10b5-1

plans only during company-adopted trading windows; (ii) prohibiting executives from having overlapping 10b5-1 plans; (iii) implementing time restrictions for trading from the date of adoption or modification of plan; and (iv) curtailing the ability to modify, amend or cancel an existing plan.

## CONCLUSION

As has been the trend for the last few years, 2012 was another big year for insider trading cases. The government continued to make insider trading a top enforcement priority and continued its unbroken record of trial victories. The investigations and actions started in 2012 are likely to make 2013 yet another notable year for insider trading enforcement.

# Appendix A

## 2012: Penalties Imposed in Insider Trading Prosecutions

Date	Defendant	Role	Trial or Plea	Sentence
1/11/2012	Drew "Bo" Brownstein  ( <i>United States v. Brownstein</i> , S.D.N.Y. 2011)	Tippee	Plea	<ul style="list-style-type: none"> <li>• 1 year and 1 day imprisonment plus 3 years supervised release (including 6 months home confinement)</li> <li>• Guidelines Calculation: Offense level 21 (37-46 months): +8 base level +16 gain -3 acceptance of responsibility</li> <li>• \$2,445,856 forfeiture</li> <li>• \$7,500 fine</li> <li>• \$100 special assessment</li> <li>• 500 hours of community service</li> </ul>
1/20/2012	David Slaine  ( <i>United States v. Slaine</i> , S.D.N.Y. 2009)	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 23 (46 to 57 months)*</li> <li>• \$532,287 forfeiture</li> <li>• \$500,000 fine</li> <li>• \$200 special assessment</li> <li>• 300 hours of community service</li> </ul>
3/5/2012	Cheng Yi Liang  ( <i>United States v. Liang</i> , D. Md. 2011)	Tippee	Plea	<ul style="list-style-type: none"> <li>• 60 months imprisonment plus 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 25 (57 to 71 months): +8 base level +18 gain +2 abuse of trust -3 acceptance of responsibility</li> <li>• \$2,757,188 forfeiture</li> <li>• \$200 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Slaine faced up to 57 months in prison under the Guidelines.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
3/23/2012	Matthew Devlin  <i>(United States v. Devlin, S.D.N.Y. 2008)</i>	Tipper	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 21 (37 to 46 months)*</li> <li>• \$23,000 forfeiture</li> <li>• \$10,000 fine</li> <li>• \$500 special assessment</li> </ul>
4/11/2012	Drew Peterson  <i>(United States v. Peterson, S.D.N.Y. 2011)</i>	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 23 (46 to 57 months)**</li> <li>• \$205,416 forfeiture</li> <li>• \$10,000 fine</li> <li>• \$200 special assessment</li> <li>• 200 hours of community service</li> </ul>
4/12/2012	Son Ngoc "Sonny" Nguyen  <i>(United States v. Jiau, et al., S.D.N.Y. 2011)</i>	Tippee/ Tipper	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 1 year supervised release</li> <li>• Guidelines Calculation: Offense level 10 (6 to 12 months): +8 base level +2 gain +2 abuse of trust -2 acceptance of responsibility</li> <li>• \$6,464 forfeiture</li> <li>• \$100 special assessment</li> </ul>
4/16/2012	James Turner II  <i>(United States v. Turner, D.N.J. 2011)</i>	Tippee	Plea	<ul style="list-style-type: none"> <li>• 12 months imprisonment plus 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 25 (57 to 71 months): +8 base level +18 gain +2 obstruction -3 acceptance of responsibility</li> <li>• \$25,000 fine</li> <li>• \$100 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Devlin faced up to 46 months in prison under the Guidelines.

\*\* Precise calculation unknown; it was publicly reported that Peterson faced between 46 and 57 months in prison under the Guidelines.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
4/18/2012	Gautham Shankar  ( <i>United States v. Shankar</i> , S.D.N.Y. 2009)	Tippee/ Tipper	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release (including 6 months home confinement)</li> <li>• Guidelines Calculation: Offense level 19 (30 to 37 months)*</li> <li>• \$448,437 forfeiture</li> <li>• \$25,000 fine</li> <li>• \$200 special assessment</li> </ul>
5/9/2012	Stanley Ng  ( <i>United States v. Jiau, et al.</i> , S.D.N.Y. 2011)	Tipper	Plea	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 10 (6 to 12 months)**</li> <li>• \$6,464 forfeiture</li> <li>• \$2,000 fine</li> <li>• \$100 special assessment</li> <li>• 400 hours of community service</li> </ul>
5/14/2012	Scott Vollmar  ( <i>United States v. Vollmar</i> , D.N.J. 2011)	Tipper	Plea	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 23 (46 to 57 months): +8 base level +16 gain +2 obstruction -3 acceptance of responsibility</li> <li>• \$15,000 fine</li> <li>• \$100 special assessment</li> </ul>
6/1/2012	Franz Tudor  ( <i>United States v. Tudor</i> , S.D.N.Y. 2009)	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 13 (12 to 18 months): +8 base +8 gain -3 acceptance of responsibility</li> <li>• \$86,119 forfeiture</li> <li>• \$20,000 fine</li> <li>• \$200 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Shankar faced up to 37 months in prison under the Guidelines.

\*\* Precise calculation unknown; it was publicly reported that Ng faced between 6 and 12 months in prison under the Guidelines.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
6/4/2012	Scott Robarge  <i>(United States v. Robarge, D.N.J. 2011)</i>	Tippee	Plea	<ul style="list-style-type: none"> <li>• 1 year supervised release</li> <li>• Guidelines Calculation: Offense level 19 (30 to 37 months): +8 base level +14 gain -3 acceptance of responsibility</li> <li>• \$5,000 fine</li> <li>• \$100 special assessment</li> </ul>
6/4/2012	Matthew Kluger  <i>(United States v. Kluger, D.N.J. 2011)</i>	Tipper	Plea	<ul style="list-style-type: none"> <li>• 12 years imprisonment plus 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 33 (135 to 168 months)*</li> <li>• \$415,000 forfeiture</li> <li>• \$400 special assessment</li> </ul>
6/4/2012	Garrett Bauer  <i>(United States v. Bauer, D.N.J. 2011)</i>	Tippee	Plea	<ul style="list-style-type: none"> <li>• 9 years imprisonment plus 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 31 (108 to 135 months): +8 base level +22 gain +2 money laundering +2 obstruction of justice -3 acceptance of responsibility</li> <li>• Forfeiture of specified assets and real property</li> <li>• \$400 special assessment</li> </ul>
6/5/2012	Kenneth Robinson  <i>(United States v. Robinson, D.N.J. 2011)</i>	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 27 months imprisonment plus 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 27 (70 to 87 months)**</li> <li>• \$175,000 forfeiture</li> <li>• \$300 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Kluger faced between 135 and 168 months in prison under the Guidelines.

\*\* Precise calculation unknown; it was publicly reported that Robinson faced between 70 and 87 months in prison under the Guidelines.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
6/26/2012	Adam Smith  <i>(United States v. Rajaratnam, et al., S.D.N.Y. 2009)</i>	Tipper/ Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 25 (57 to 71 months)*</li> <li>• \$105,300 forfeiture</li> <li>• \$15,000 fine</li> <li>• \$200 special assessment</li> </ul>
7/19/2012	Anil Kumar  <i>(United States v. Kumar, S.D.N.Y. 2009)</i>	Tipper/ Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 21 (37 to 46 months): +8 base level +16 gain -3 acceptance of responsibility</li> <li>• \$2,260,000 forfeiture</li> <li>• \$25,000 fine</li> <li>• \$200 special assessment</li> </ul>
8/2/2012	Anthony Scolaro  <i>(United States v. Scolaro, S.D.N.Y. 2011)</i>	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 19 (30 to 37 months)**</li> <li>• \$125,890 forfeiture</li> <li>• \$150,000 fine</li> <li>• \$200 special assessment</li> </ul>
8/10/2012	Sherif Mityas  <i>(United States v. Mityas, E.D.N.Y. 2012)</i>	Tippee	Plea	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 12 (10 to 16 months)***</li> <li>• \$25,800 forfeiture</li> <li>• \$100 special assessment</li> </ul>
9/24/2012	Rajiv Goel  <i>(United States v. Goel, S.D.N.Y. 2010)</i>	Tipper	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 23 (46 to 57 months)****</li> <li>• \$266,649 forfeiture</li> <li>• \$10,000 fine</li> <li>• \$200 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Smith faced between 57 and 71 months in prison under the Guidelines.

\*\* Precise calculation unknown; it was publicly reported that Scolaro faced between 30 and 37 months in prison under the Guidelines.

\*\*\* Precise calculation unknown; it was publicly reported that Mityas faced between 10 and 16 months in prison under the Guidelines.

\*\*\*\* Precise calculation unknown; it was publicly reported that Goel faced between 46 and 57 months in prison under the Guidelines.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
10/17/2012	Robert Kwok <i>(United States v. Kwok, S.D.N.Y. 2012)</i>	Tipper	Plea	<ul style="list-style-type: none"> <li>• 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 8 (0 to 6 months) +8 base level</li> <li>• \$4,754 forfeiture</li> <li>• \$1,000 fine</li> <li>• \$100 special assessment</li> </ul>
10/24/2012	Rajat Gupta <i>(United States v. Gupta, S.D.N.Y. 2011)</i>	Tipper	Trial	<ul style="list-style-type: none"> <li>• 24 months imprisonment plus 1 year supervised release</li> <li>• Guidelines Calculation: Offense level 28 (78 to 97 months): +8 base level +18 gain +2 abuse of trust</li> <li>• \$5,000,000 fine</li> <li>• \$400 special assessment</li> <li>• Restitution to be determined at future date</li> </ul>
10/25/2012	Michael Cardillo <i>(United States v. Cardillo, S.D.N.Y. 2011)</i>	Tippee	Plea (Cooperate)	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation*</li> <li>• \$291,189 forfeiture</li> <li>• \$200 special assessment</li> </ul>
10/25/2012	Alnoor Ebrahim <i>(United States v. Ebrahim, S.D.N.Y. 2012)</i>	Tipper	Plea	<ul style="list-style-type: none"> <li>• 1 year and 1 day imprisonment plus 2 years supervised release</li> <li>• Guidelines Calculation: Offense level 15 (18 to 24 months): +8 base +10 gain -3 acceptance of responsibility</li> <li>• \$189,893 forfeiture</li> <li>• \$10,000 fine</li> <li>• \$100 special assessment</li> </ul>

\* Precise calculation unknown.

# Appendix A

## CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
10/26/2012	Thomas Flanagan  ( <i>United States v. Flanagan</i> , N.D. Ill. 2010)	Tippee	Plea	<ul style="list-style-type: none"> <li>• 21 months imprisonment plus 1 year supervised release</li> <li>• Guidelines Calculation: Offense level 21 (37 to 46 months)*</li> <li>• \$100,000 fine</li> </ul>
12/17/2012	George Holley  ( <i>United States v. Holley</i> , D.N.J. 2011)	Tipper	Plea	<ul style="list-style-type: none"> <li>• 3 years supervised release</li> <li>• Guidelines Calculation: Offense level 20 (33 to 41 months)**</li> <li>• \$260,000 fine</li> <li>• \$200 special assessment</li> </ul>

\* Precise calculation unknown; it was publicly reported that Flanagan faced between 37 and 46 months in prison under the Guidelines.

\*\* Precise calculation unknown; it was publicly reported that Holley faced between 33 and 41 months in prison under the Guidelines.

# Appendix B

## 2012: Penalties Imposed in Insider Trading SEC Enforcement Actions

Date	Defendant	Role	Trial or Settlement	Outcome
1/12/2012	Thomas Chow <i>(SEC v. Li, et al., D. Ariz. 2011)</i>	Tippee	Default Judgment	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$10,370,317 disgorgement</li> <li>• \$2,567,484 prejudgment interest</li> <li>• \$30,849,951 civil penalty</li> </ul>
1/13/2012	Farzin Bazshushtari <i>(SEC v. Bazshushtari, C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$76,677 disgorgement</li> <li>• \$7,090 prejudgment interest</li> <li>• \$76,677 civil penalty</li> </ul>
1/23/2012	Barai Capital Management <i>(SEC v. Longoria, et al., S.D.N.Y. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$3,000,000 disgorgement</li> <li>• \$434,225 prejudgment interest</li> </ul>
1/23/2012	Samir Barai <i>(SEC v. Longoria, et al., S.D.N.Y. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$3,000,000 disgorgement (credited by disgorgement paid by Barai Capital Management)</li> <li>• \$434,225 prejudgment interest (credited by prejudgment interest paid by Barai Capital Management)</li> <li>• No civil penalty based on cooperation agreement</li> </ul>
1/23/2012	Bob Nguyen <i>(SEC v. Longoria, et al., S.D.N.Y. 2011)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$190,890 judgment representing wages earned while employed by Primary Global Research</li> <li>• \$11,449 prejudgment interest</li> <li>• No civil penalty based on cooperation agreement</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
1/23/2012	Diamondback Capital Management LLC  (SEC v. Adondakis, et al., S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$5,173,000 disgorgement</li> <li>• \$832,751 prejudgment interest</li> <li>• \$3,000,000 civil penalty</li> </ul>
1/24/2012	Robert Ward  (SEC v. Ward, et al., S.D. Ohio 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$108,413 disgorgement (jointly and severally liable with B. Lewis, S. Lewis, and J. Lewis)</li> <li>• \$12,625 prejudgment interest (jointly and severally liable with B. Lewis, S. Lewis, and J. Lewis)</li> <li>• Civil penalty waived based on demonstrated inability to pay</li> </ul>
1/24/2012	Benjamin Lewis  (SEC v. Ward, et al., S.D. Ohio 2012)	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$44,575 disgorgement (jointly and severally liable with R. Ward)</li> <li>• \$5,635 prejudgment interest (jointly and severally liable with R. Ward)</li> <li>• \$44,575 civil penalty</li> </ul>
1/24/2012	Stanley Lewis  (SEC v. Ward, et al., S.D. Ohio 2012)	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$48,843 disgorgement (jointly and severally liable with R. Ward)</li> <li>• \$5,873 prejudgment interest (jointly and severally liable with R. Ward)</li> <li>• \$48,843 civil penalty</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
1/24/2012	Jamie Lewis  ( <i>SEC v. Ward, et al.</i> , S.D. Ohio 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$14,996 disgorgement (jointly and severally liable with R. Ward)</li> <li>• \$2,569 prejudgment interest (jointly and severally liable with R. Ward)</li> <li>• \$14,996 civil penalty</li> </ul>
1/24/2012	Dale Shafer  ( <i>SEC v. Shafer, et al.</i> , S.D. Ohio 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$33,484 disgorgement (jointly and severally liable with J. Gonski)</li> <li>• \$5,474 prejudgment interest (jointly and severally liable with J. Gonski)</li> <li>• \$33,484 civil penalty</li> <li>• 5 year officer/director bar</li> </ul>
1/24/2012	Jason Gonski  ( <i>SEC v. Shafer, et al.</i> , S.D. Ohio 2012)	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$43,226 disgorgement (portions jointly and severally liable with D. Shafer and J. Mroz)</li> <li>• \$7,572 prejudgment interest (portions jointly and severally liable with D. Shafer and J. Mroz)</li> <li>• \$50,686 civil penalty</li> </ul>
1/24/2012	Joseph Mroz  ( <i>SEC v. Shafer, et al.</i> , S.D. Ohio 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$7,460 disgorgement (jointly and severally liable with J. Gonski)</li> <li>• \$1,307 prejudgment interest (jointly and severally liable with J. Gonski)</li> <li>• \$7,460 civil penalty</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
1/30/2012	Todd Treadway <i>(SEC v. Treadway, S.D.N.Y. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$27,408 disgorgement</li> <li>• \$3,474 prejudgment interest</li> <li>• \$10,000 civil penalty</li> </ul>
1/31/2012	Daniel Burns <i>(SEC v. CytoCore, Inc., et al., N.D. Ill. 2011)</i>	Tippee	Default Judgment	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$804,100 disgorgement</li> <li>• \$324,325 prejudgment interest</li> <li>• Officer/director bar</li> </ul>
1/31/2012	Craig Drimal <i>(SEC v. Cutillo, et al., S.D.N.Y. 2009)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$6,711,805 disgorgement</li> <li>• \$970,481 prejudgment interest</li> <li>• Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
1/31/2012	David Plate <i>(SEC v. Cutillo, et al., S.D.N.Y. 2009)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$134,983 disgorgement</li> <li>• \$17,460 prejudgment interest</li> <li>• Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
2/8/2012	Joseph Contorinis <i>(SEC v. Contorinis, S.D.N.Y. 2009)</i>	Tippee	Summary Judgment	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$7,260,604 disgorgement</li> <li>• \$2,485,202 prejudgment interest</li> <li>• \$1,000,000 civil penalty</li> </ul>
2/9/2012	Brent Bankosky <i>(SEC v. Bankosky, S.D.N.Y. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$63,000 disgorgement</li> <li>• \$10,076 prejudgment interest</li> <li>• \$63,000 civil penalty</li> <li>• 10 year officer/director bar</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
2/21/2012	Jason Pflaum <i>(SEC v. Longoria, et al., S.D.N.Y. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$101,943 disgorgement</li> <li>• \$11,872 prejudgment interest</li> <li>• No civil penalty based on cooperation agreement</li> </ul>
2/24/2012	Walter Shimoon <i>(SEC v. Longoria, et al., S.D.N.Y. 2011)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$44,175 disgorgement</li> <li>• \$6,099 prejudgment interest</li> <li>• No civil penalty based on cooperation agreement</li> </ul>
2/28/2012	Marleen Jantzen <i>(SEC v. Jantzen, et al., W.D. Tex. 2010)</i>	Tipper	Summary Judgment	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$26,921 disgorgement (jointly and severally liable with J. Jantzen)</li> <li>• \$2,454 prejudgment interest (jointly and severally liable with J. Jantzen)</li> <li>• \$26,921 civil penalty</li> </ul>
2/28/2012	John Jantzen <i>(SEC v. Jantzen, et al., W.D. Tex. 2010)</i>	Tippee	Summary Judgment	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$26,921 disgorgement (jointly and severally liable with M. Jantzen)</li> <li>• \$2,454 prejudgment interest (jointly and severally liable with M. Jantzen)</li> <li>• \$26,921 civil penalty</li> </ul>
3/5/2012	John Williams <i>(SEC v. Williams, E.D. Pa. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$6,803 disgorgement</li> <li>• \$620 prejudgment interest</li> <li>• \$6,803 civil penalty</li> </ul>
3/5/2012	William Duncan <i>(SEC v. Duncan, C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$85,525 disgorgement</li> <li>• \$4,599 prejudgment interest</li> <li>• \$85,525 civil penalty</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
3/9/2012	Alissa Kueng <i>(SEC v. Kueng, S.D.N.Y. 2009)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$353,621 disgorgement</li> <li>• \$127,811 prejudgment interest</li> <li>• \$25,000 civil penalty</li> </ul>
3/13/2012	Marianna Sze Wan Ho <i>(SEC v. McGee, et al., E.D. Pa. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$110,580 disgorgement</li> <li>• \$16,317 prejudgment interest</li> <li>• \$16,587 civil penalty</li> </ul>
3/13/2012	Paulo Lam <i>(SEC v. McGee, et al., E.D. Pa. 2012)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$837,975 disgorgement</li> <li>• \$123,649 prejudgment interest</li> <li>• \$251,392 civil penalty</li> </ul>
3/14/2012	Ying Kit Yu <i>(SEC v. Tang, et al., N.D. Cal. 2009)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$13,010 disgorgement</li> <li>• \$1,732 prejudgment interest</li> <li>• \$26,019 civil penalty</li> </ul>
3/15/2012	Sherif Mityas <i>(SEC v. Mityas, E.D.N.Y. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$37,931 disgorgement</li> <li>• \$2,375 prejudgment interest</li> <li>• \$37,931 civil penalty</li> <li>• Officer/director bar</li> </ul>
3/16/2012	Michael Kimelman <i>(SEC v. Cutillo, et al., S.D.N.Y. 2009)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$273,255 disgorgement</li> <li>• \$54,582 prejudgment interest</li> <li>• Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
3/16/2012	Noah Griggs, Jr. <i>(SEC v. Griggs, C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$145,430 disgorgement</li> <li>• \$11,036 prejudgment interest</li> <li>• \$111,730 civil penalty</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
3/16/2012	Lanexa Management LLC  ( <i>SEC v. Hardin, et al.</i> , S.D.N.Y. 2010)	Relief Defendant	Settlement	<ul style="list-style-type: none"> <li>• \$612,190 disgorgement</li> <li>• \$134,607 prejudgment interest</li> </ul>
3/23/2012	W. Gary Griffiths  ( <i>SEC v. Steffes, et al.</i> , N.D. Ill. 2010)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$120,000 civil penalty</li> </ul>
3/24/2012	Winifred Jiau  ( <i>SEC v. Longoria, et al.</i> , S.D.N.Y. 2011)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• Civil penalty waived based on demonstrated inability to pay</li> </ul>
3/29/2012	Michael Sarkesian  ( <i>SEC v. Quorne Limited, et al.</i> , S.D.N.Y. 2010)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$616,000 disgorgement (jointly and severally liable with Quorne Limited)</li> <li>• \$93,806 civil penalty (jointly and severally liable with Quorne Limited)</li> </ul>
3/29/2012	Quorne Limited  ( <i>SEC v. Quorne Limited, et al.</i> , S.D.N.Y. 2010)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$616,000 disgorgement (jointly and severally liable with M. Sarkesian)</li> <li>• \$93,806 civil penalty (jointly and severally liable with M. Sarkesian)</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
4/4/2012	Zvi Rosenthal <i>(SEC v. Aragon Capital Advisors, LLC, et al., S.D.N.Y. 2007)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> <li>• \$232,873 civil penalty</li> <li>• Officer/director bar</li> </ul>
4/4/2012	Amir Rosenthal <i>(SEC v. Aragon Capital Advisors, LLC, et al., S.D.N.Y. 2007)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> <li>• \$157,738 civil penalty</li> </ul>
4/4/2012	Ayal Rosenthal <i>(SEC v. Aragon Capital Advisors, LLC, et al., S.D.N.Y. 2007)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> </ul>
4/4/2012	Oren Rosenthal <i>(SEC v. Aragon Capital Advisors, LLC, et al., S.D.N.Y. 2007)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• \$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> </ul>
4/4/2012	Rivka Rosenthal <i>(SEC v. Aragon Capital Advisors, LLC, et al., S.D.N.Y. 2007)</i>	Relief Defendant	Settlement	<ul style="list-style-type: none"> <li>• \$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
4/4/2012	Efrat Rosenthal  ( <i>SEC v. Aragon Capital Advisors, LLC, et al.</i> , S.D.N.Y. 2007)	Relief Defendant	Settlement	<ul style="list-style-type: none"> <li>\$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> </ul>
4/4/2012	Noga Delshad Rosenthal  ( <i>SEC v. Aragon Capital Advisors, LLC, et al.</i> , S.D.N.Y. 2007)	Relief Defendant	Settlement	<ul style="list-style-type: none"> <li>\$2,204,885 disgorgement and prejudgment interest (jointly and severally liable with other defendants and relief defendants)</li> </ul>
4/25/2012	Matthew Kluger  ( <i>SEC v. Kluger, et al.</i> , D.N.J. 2011)	Tipper	Settlement	<ul style="list-style-type: none"> <li>Permanent injunction</li> <li>\$502,500 disgorgement</li> <li>\$14,010 prejudgment interest</li> <li>Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
4/25/2012	Garrett Bauer  ( <i>SEC v. Kluger, et al.</i> , D.N.J. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>Permanent injunction</li> <li>\$31,671,931 disgorgement</li> <li>\$859,135 prejudgment interest</li> <li>Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
4/25/2012	Kenneth Robinson  ( <i>SEC v. Robinson</i> , D.N.J. 2012)	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>Permanent injunction</li> <li>\$845,235 disgorgement</li> <li>\$16,106 prejudgment interest</li> <li>No civil penalty based on cooperation agreement</li> </ul>
5/7/2012	James Fleishman  ( <i>SEC v. Longoria, et al.</i> , S.D.N.Y. 2011)	Tipper	Settlement	<ul style="list-style-type: none"> <li>Permanent injunction</li> <li>\$49,150 disgorgement</li> <li>Civil penalty waived in light of judgment in parallel criminal action</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
5/7/2012	Angela Milliard <i>(SEC v. Milliard, et al., D. Mont. 2012)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$20,355 disgorgement</li> <li>• \$1,615 prejudgment interest</li> <li>• \$54,022 civil penalty</li> </ul>
5/7/2012	Kenneth Milliard <i>(SEC v. Milliard, et al., D. Mont. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$47,805 disgorgement</li> <li>• \$3,765 prejudgment interest</li> <li>• \$47,805 civil penalty</li> </ul>
5/8/2012	Mark Amin <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$618,497 disgorgement (jointly and severally liable with R. Amin, M. Amin, S. Pirnazar, M. Coley, and A. Tashakori)</li> <li>• \$78,000 prejudgment interest (jointly and severally liable with R. Amin, M. Amin, S. Pirnazar, M. Coley, and A. Tashakori)</li> <li>• \$618,497 civil penalty</li> <li>• 10 year officer/director bar</li> </ul>
5/8/2012	Reza Amin <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$279,936 disgorgement (jointly and severally liable with M. Coley and A. Tashakori)</li> <li>• \$35,303 prejudgment interest (jointly and severally liable with M. Coley and A. Tashakori)</li> <li>• \$241,767 civil penalty</li> </ul>
5/8/2012	Michael Amin <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$318,646 disgorgement</li> <li>• \$40,185 prejudgment interest</li> <li>• \$318,646 civil penalty</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
5/8/2012	Sam Pirnazar <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$19,915 disgorgement</li> <li>• \$2,512 prejudgment interest</li> <li>• \$19,915 civil penalty</li> </ul>
5/8/2012	Mary Coley <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$23,690 disgorgement</li> <li>• \$2,988 prejudgment interest</li> <li>• \$23,690 civil penalty</li> </ul>
5/8/2012	Ali Tashakori <i>(SEC v. Amin, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$14,479 disgorgement</li> <li>• \$1,826 prejudgment interest</li> <li>• \$14,479 civil penalty</li> </ul>
5/10/2012	Bobby Khan <i>(SEC v. Khan, N.D. Ga. 2010)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$47,171 disgorgement</li> <li>• \$6,516 prejudgment interest</li> <li>• \$47,171 civil penalty</li> </ul>
5/11/2012	Frank Blystone <i>(SEC v. Blystone, E.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$36,267 disgorgement</li> <li>• \$2,493 prejudgment interest</li> <li>• \$36,267 civil penalty</li> </ul>
5/22/2012	Reema Shah <i>(SEC v. Shah, et al., S.D.N.Y. 2012)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• Possible disgorgement, prejudgment interest, and civil penalty to be determined at a later date</li> </ul>
5/22/2012	Robert Kwok <i>(SEC v. Shah, et al., S.D.N.Y. 2012)</i>	Tipper/ Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• Possible disgorgement, prejudgment interest, and civil penalty to be determined at a later date</li> <li>• Officer/director bar</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
5/24/2012	Stephen Guth  ( <i>SEC v. Guth</i> , D.D.C. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$63,517 disgorgement</li> <li>• \$7,695 prejudgment interest</li> <li>• \$31,758 civil penalty</li> </ul>
5/29/2012	Drew "Bo" Brownstein  ( <i>SEC v. Peterson, et al.</i> , S.D.N.Y. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$435,723 disgorgement</li> <li>• \$4,148,263 disgorgement (jointly and severally liable with Big 5 Asset Management, LLC)</li> <li>• \$23,427 prejudgment interest</li> <li>• \$274,709 prejudgment interest (jointly and severally liable with Big 5 Asset Management, LLC)</li> <li>• Civil penalty waived in light of judgment in parallel criminal action</li> </ul>
5/29/2012	Drew Peterson  ( <i>SEC v. Peterson, et al.</i> , S.D.N.Y. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$205,416 disgorgement (jointly and severally liable with H.C. Peterson)</li> <li>• \$13,603 prejudgment interest (jointly and severally liable with H.C. Peterson)</li> <li>• No civil penalty based on cooperation agreement</li> </ul>
5/29/2012	H. Clayton Peterson  ( <i>SEC v. Peterson, et al.</i> , S.D.N.Y. 2011)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$205,416 disgorgement (jointly and severally liable with D. Peterson)</li> <li>• \$13,603 prejudgment interest (jointly and severally liable with D. Peterson)</li> <li>• Civil penalty waived in light of judgment in parallel criminal action</li> <li>• Officer/director bar</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
5/29/2012	Big 5 Asset Management, LLC  ( <i>SEC v. Peterson, et al.</i> , S.D.N.Y. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$4,148,263 disgorgement (jointly and severally liable with D. Brownstein)</li> <li>• \$274,709 prejudgment interest (jointly and severally liable with D. Brownstein)</li> </ul>
5/31/2012	R. Brooke Dunn  ( <i>SEC v. Dunn, et al.</i> , D. Nev. 2009)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$181,594 civil penalty</li> <li>• 5 year officer/director bar</li> </ul>
5/31/2012	Nicholas Howey  ( <i>SEC v. Dunn, et al.</i> , D. Nev. 2009)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$181,594 disgorgement</li> <li>• \$30,403 prejudgment interest</li> <li>• \$181,594 civil penalty</li> </ul>
6/1/2012	Charles Mazur, Jr.  ( <i>SEC v. Mazur, et al.</i> , W.D. Pa. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$47,355 disgorgement</li> <li>• \$2,461 prejudgment interest</li> <li>• \$47,355 civil penalty</li> </ul>
6/1/2012	James Poland  ( <i>SEC v. Mazur, et al.</i> , W.D. Pa. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$9,552 disgorgement</li> <li>• \$496 prejudgment interest</li> <li>• \$9,552 civil penalty</li> </ul>
6/1/2012	Joseph Cerenzia  ( <i>SEC v. Mazur, et al.</i> , W.D. Pa. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$7,518 disgorgement</li> <li>• \$418 prejudgment interest</li> <li>• \$7,518 civil penalty</li> </ul>
6/13/2012	Toby Scammell  ( <i>SEC v. Scammell</i> , C.D. Cal. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• Possible disgorgement, prejudgment interest, and civil penalty to be determined at a later date</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
6/15/2012	Jilaine Bauer  ( <i>SEC v. Heartland Advisors, Inc., et al.</i> , E.D. Wis. 2003)	Tippee	Summary Judgment	<ul style="list-style-type: none"> <li>• \$20,033 disgorgement</li> <li>• \$2,033 prejudgment interest</li> </ul>
7/10/2012	Jitendra Katneni  ( <i>SEC v. Mukkamala, et al.</i> , E.D. Mich. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$10,803 disgorgement</li> <li>• \$666 prejudgment interest</li> <li>• \$10,803 civil penalty</li> </ul>
7/10/2012	Mallikarjunarao Anne  ( <i>SEC v. Mukkamala, et al.</i> , E.D. Mich. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$122,736 disgorgement</li> <li>• \$7,567 prejudgment interest</li> <li>• \$122,736 civil penalty</li> </ul>
7/10/2012	Apparao Mukkamala  ( <i>SEC v. Mukkamala, et al.</i> , E.D. Mich. 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$7,076 disgorgement</li> <li>• \$436 prejudgment interest</li> <li>• \$623,645 civil penalty</li> <li>• Officer/director bar</li> </ul>
7/10/2012	Suresh Anne  ( <i>SEC v. Mukkamala, et al.</i> , E.D. Mich. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$338,225 disgorgement</li> <li>• \$20,853 prejudgment interest</li> <li>• \$338,225 civil penalty</li> </ul>
7/10/2012	Rao A.K. Yalamanchili  ( <i>SEC v. Mukkamala, et al.</i> , E.D. Mich. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$144,805 disgorgement</li> <li>• \$8,928 prejudgment interest</li> <li>• \$144,805 civil penalty</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
7/30/2012	Peter Siris <i>(SEC v. Siris, et al., S.D.N.Y. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$592,942 disgorgement (jointly and severally with other defendants)</li> <li>• \$70,489 prejudgment interest (jointly and severally with other defendants)</li> <li>• \$464,012 civil penalty</li> </ul>
7/30/2012	Guerrilla Capital Management, LLC <i>(SEC v. Siris, et al., S.D.N.Y. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$592,942 disgorgement (jointly and severally with other defendants)</li> <li>• \$70,489 prejudgment interest (jointly and severally with other defendants)</li> </ul>
7/30/2012	Hua Mei 21 <sup>st</sup> Century, LLC <i>(SEC v. Siris, et al., S.D.N.Y. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$592,942 disgorgement (jointly and severally with other defendants)</li> <li>• \$70,489 prejudgment interest (jointly and severally with other defendants)</li> </ul>
8/3/2012	Joseph McVicker <i>(SEC v. McVicker, D. Mass. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$44,268 disgorgement</li> <li>• \$365 prejudgment interest</li> <li>• \$44,268 civil penalty</li> </ul>
8/9/2012	Thomas Flanagan <i>(SEC v. Flanagan, et al., N.D. Ill. 2010)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$493,884 disgorgement</li> <li>• \$63,274 prejudgment interest</li> <li>• \$493,884 civil penalty</li> </ul>
8/9/2012	Patrick Flanagan <i>(SEC v. Flanagan, et al., N.D. Ill. 2010)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$57,656 disgorgement</li> <li>• \$7,958 prejudgment interest</li> <li>• \$57,656 civil penalty</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
8/17/2012	Eddie Murray <i>(SEC v. Mazzo, et al., C.D. Cal. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$235,314 disgorgement</li> <li>• \$5,180 prejudgment interest</li> <li>• \$117,657 civil penalty</li> </ul>
8/21/2012	James Lieberman <i>(SEC v. Lieberman, D. Colo. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$71,361 disgorgement</li> <li>• \$4,906 prejudgment interest</li> <li>• \$71,361 civil penalty</li> </ul>
8/28/2012	C. Roan Berry <i>(SEC v. Berry, N.D. Ga. 2012)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$55,092 disgorgement</li> <li>• \$4,860 prejudgment interest</li> <li>• \$55,092 civil penalty</li> </ul>
8/28/2012	Ashley Coots <i>(SEC v. Coots, N.D. Ga. 2012)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$17,360 disgorgement</li> <li>• \$1,565 prejudgment interest</li> <li>• \$13,232 civil penalty</li> </ul>
8/28/2012	Casey Jackson <i>(SEC v. Jackson, N.D. Ga. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$2,370 disgorgement</li> <li>• \$222 prejudgment interest</li> <li>• \$1,185 civil penalty</li> </ul>
8/28/2012	R. Jeffrey Rooks <i>(SEC v. Rooks, N.D. Ga. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$18,482 disgorgement</li> <li>• \$1,433 prejudgment interest</li> <li>• \$4,621 civil penalty</li> </ul>
8/31/2012	James Turner II <i>(SEC v. Clay Capital Mgmt., LLC, et al., D.N.J. 2011)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$2,585,242 disgorgement</li> <li>• \$430,047 prejudgment interest</li> <li>• Civil penalty waived based on demonstrated inability to pay</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
8/31/2012	Clay Capital Management, LLC  ( <i>SEC v. Clay Capital Mgmt., LLC, et al.</i> , D.N.J. 2011)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$1,062,822 disgorgement</li> <li>• \$182,445 prejudgment interest</li> <li>• Civil penalty waived based on demonstrated inability to pay</li> </ul>
9/5/2012	Renee White Fraser  ( <i>SEC v. Fraser</i> , C.D. Cal. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$43,868 disgorgement</li> <li>• \$3,794 prejudgment interest</li> <li>• \$43,868 civil penalty</li> </ul>
9/6/2012	Arthur Reed  ( <i>SEC v. Reed, et al.</i> , N.D. Ill. 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$272,958 disgorgement</li> <li>• \$38,714 prejudgment interest</li> <li>• \$94,182 civil penalty</li> </ul>
9/6/2012	Allan Derusha  ( <i>SEC v. Reed, et al.</i> , N.D. Ill. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$159,230 disgorgement</li> <li>• \$19,578 prejudgment interest</li> <li>• \$79,615 civil penalty</li> </ul>
9/20/2012	H. Thomas Davis, Jr.  ( <i>SEC v. Davis</i> , E.D.N.C. 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$41,584 disgorgement (jointly and severally with M. Baggett)</li> <li>• \$1,903 prejudgment interest (jointly and severally with M. Baggett)</li> <li>• \$41,584 civil penalty</li> <li>• Officer/director bar</li> </ul>
9/20/2012	Kenneth Wrangell  ( <i>SEC v. Wrangell</i> , E.D.N.C. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$42,522 disgorgement</li> <li>• \$1,725 prejudgment interest</li> <li>• \$11,380 civil penalty</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
9/20/2012	Mark Baggett <i>(SEC v. Baggett, N.D. Ga. 2012)</i>	Tippee/ Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• Possible disgorgement, prejudgment interest, and civil penalty to be determined at a later date</li> </ul>
9/25/2012	Gilbert Lundstrom <i>(SEC v. Lundstrom, et al., D. Neb. 2012)</i>	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$500,921 civil penalty</li> <li>• Officer/director bar</li> </ul>
9/25/2012	Trevor Lundstrom <i>(SEC v. Lundstrom, et al., D. Neb. 2012)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$225,921 disgorgement</li> <li>• \$16,507 prejudgment interest</li> <li>• \$225,921 civil penalty</li> </ul>
10/12/2012	Jie Meng <i>(SEC v. All Know Holdings Ltd., et al., N.D. Ill. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$142,052 disgorgement (jointly and severally with S. Li)</li> <li>• \$2,141 prejudgment interest (jointly and severally with S. Li)</li> <li>• \$71,000 civil penalty</li> </ul>
10/12/2012	Song Li <i>(SEC v. All Know Holdings Ltd., et al., N.D. Ill. 2011)</i>	Relief Defendant	Settlement	<ul style="list-style-type: none"> <li>• \$142,052 disgorgement (jointly and severally with J. Meng)</li> <li>• \$2,141 prejudgment interest (jointly and severally with J. Meng)</li> </ul>
10/12/2012	Lili Wang <i>(SEC v. All Know Holdings Ltd., et al., N.D. Ill. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$197,118 disgorgement</li> <li>• \$1,474 prejudgment interest</li> <li>• \$197,118 civil penalty</li> </ul>

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## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
10/18/2012	Well Advantage Limited  ( <i>SEC v. Well Advantage Limited, et al.</i> , S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$7,122,634 disgorgement</li> <li>• \$7,122,634 civil penalty</li> </ul>
10/25/2012	Frank LoBue  ( <i>SEC v. LoBue</i> , S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$60,736 disgorgement</li> <li>• \$6,749 prejudgment interest</li> <li>• \$60,736 civil penalty</li> </ul>
10/26/2012	Kris Chellam  ( <i>SEC v. Chellam</i> , S.D.N.Y. 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$675,000 disgorgement</li> <li>• \$106,383 prejudgment interest</li> <li>• \$978,684 penalty</li> <li>• 5 year officer/director bar</li> </ul>
11/20/2012	Sidney Gilman  ( <i>SEC v. CR Intrinsic Investors, L.L.C.</i> , S.D.N.Y. 2012)	Tipper	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$186,781 disgorgement</li> <li>• \$48,087 prejudgment interest</li> <li>• Civil penalty to be determined</li> </ul>
11/30/2012	Igor Cornelsen  ( <i>SEC v. Cornelsen, et al.</i> , S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$1,681,090 disgorgement (jointly and severally with Bainbridge Group Inc.)</li> <li>• \$136,621 prejudgment interest (jointly and severally with Bainbridge Group Inc.)</li> <li>• \$3,362,180 civil penalty</li> </ul>
11/30/2012	Bainbridge Group Inc.  ( <i>SEC v. Cornelsen, et al.</i> , S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$1,681,090 disgorgement (jointly and severally with I. Cornelsen)</li> <li>• \$136,621 prejudgment interest (jointly and severally with I. Cornelsen)</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
11/30/2012	I. Joseph Massoud  ( <i>SEC v. Massoud</i> , D. Conn. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$676,013 disgorgement</li> <li>• \$80,785 prejudgment interest</li> <li>• \$676,013 civil penalty</li> <li>• Officer/director bar</li> </ul>
12/11/2012	Steven Hart  ( <i>SEC v. Hart</i> , S.D.N.Y. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$831,071 disgorgement</li> <li>• \$103,424 prejudgment interest</li> <li>• \$394,733 civil penalty</li> </ul>
12/12/2012	Sung Kook “Bill” Hwang  ( <i>SEC v. Tiger Asia Mgmt., LLC, et al.</i> , D.N.J. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$19,048,787 disgorgement and prejudgment interest (jointly and severally with Tiger Asia Management and Tiger Asia Partners)</li> <li>• \$8,294,348 civil penalty</li> </ul>
12/12/2012	Tiger Asia Management, LLC  ( <i>SEC v. Tiger Asia Mgmt., LLC, et al.</i> , D.N.J. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$19,048,787 disgorgement and prejudgment interest (jointly and severally with S.K. Hwang and Tiger Asia Partners)</li> <li>• \$8,294,348 civil penalty</li> </ul>
12/12/2012	Tiger Asia Partners, LLC  ( <i>SEC v. Tiger Asia Mgmt., LLC, et al.</i> , D.N.J. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$19,048,787 disgorgement and prejudgment interest (jointly and severally with S.K. Hwang and Tiger Asia Management)</li> <li>• \$8,294,348 civil penalty</li> </ul>
12/12/2012	Raymond Y.H. Park  ( <i>SEC v. Tiger Asia Mgmt., LLC, et al.</i> , D.N.J. 2012)	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$39,819 disgorgement and prejudgment interest</li> <li>• \$34,897 civil penalty</li> </ul>

# Appendix B

## SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
12/20/2012	Rex Shelby <i>(SEC v. Shelby, et al., S.D. Tex. 2003)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$1,000,000 civil penalty</li> <li>• Officer/director bar</li> </ul>
12/20/2012	Scott Yeager <i>(SEC v. Shelby, et al., S.D. Tex. 2003)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• Permanent injunction</li> <li>• \$110,000 civil penalty</li> <li>• Officer/director bar</li> </ul>
12/26/2012	Raj Rajaratnam <i>(SEC v. Gupta, et al., S.D.N.Y. 2011)</i>	Tippee	Settlement	<ul style="list-style-type: none"> <li>• \$1,299,120 disgorgement</li> <li>• \$147,738 prejudgment interest</li> </ul>

- 1 *Chiarella v. United States*, 445 U.S. 222 (1980).  
2 *United States v. O'Hagan*, 521 U.S. 642 (1997).  
3 See *SEC v. Obus*, 693 F.3d 276 (2d Cir. Sept. 6, 2012).  
4 *Id.*  
5 *United States v. Whitman*, 2012 U.S. Dist. LEXIS 163138, at \*18-20 (S.D.N.Y. Nov. 14, 2012).  
6 17 C.F.R. § 240.14e-3.  
7 Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, § 1(a)(5), 114 Stat. 2763 (Dec. 21, 2000) (codified at 15 U.S.C. § 78j(b)).  
8 15 U.S.C. § 78u-1.  
9 Patricia Hurtado, "FBI Pulls Off 'Perfect Hedge' to Nab New Insider Trading Class," Bloomberg, Dec. 20, 2011, available at <http://www.bloomberg.com/news/2011-12-20/fbi-pulls-off-perfect-hedge-to-nab-new-insider-trading-class.html>.  
10 Memorandum and Opinion at 1, *United States v. Rajaratnam*, No. 09-cr-1184 (RJH) (S.D.N.Y. Nov. 29, 2010), ECF No. 148.  
11 *Id.* at 30.  
12 Brief of Appellant Raj Rajaratnam, *United States v. Rajaratnam*, No. 11-4416-cr (2d Cir. Jan. 25, 2012), ECF No. 75.  
13 *Id.* at 30.  
14 Peter Lattman, "Lawyer Denounces Wiretaps in Appeal of Galleon Case," N.Y. Times DealBook, Oct. 25, 2012, available at <http://dealbook.nytimes.com/2012/10/25/rajaratnams-lawyers-argue-to-overturn-conviction>.  
15 *Id.*  
16 Shira Ovide, "In Arresting Goldman Sachs Ex-Director, Is the Government Chasing the Big Fish?," Wall St. J. Deal J., Apr. 16, 2011, available at <http://blogs.wsj.com/deals/2011/10/26/in-arresting-goldman-sachs-ex-director-is-the-government-chasing-the-big-fish/>.  
17 Memorandum Order, *United States v. Gupta*, No. 11-cr-907 (JSR) (S.D.N.Y. Mar. 27, 2012), ECF No. 42.  
18 Indictment ¶ 31, *United States v. Gupta*, No. 11-cr-907 (JSR) (S.D.N.Y. Oct. 25, 2011), ECF No. 1.  
19 Peter Lattman, "Former Goldman Director Gupta to Stay Free Pending Appeal," N.Y. Times DealBook, Dec. 4, 2012, available at <http://dealbook.nytimes.com/2012/12/04/former-goldman-director-gupta-to-stay-free-pending-his-appeal/>.  
20 Patricia Hurtado & David Glovin, "Gupta Seeks Identity of Possible Tipper 'X' at Goldman, P&G," Bloomberg, Jan 28, 2012, available at <http://www.bloomberg.com/news/2012-01-27/gupta-seeks-identity-of-possible-tipper-x.html>; "Rajat Gupta Defense Rests in U.S. Insider-Trading Trial," June 12, 2012, available at <http://www.businessweek.com/news/2012-06-12/rajat-gupta-defense-rests-in-u-dot-s-dot-insider-trading-trial>.  
21 *Id.*  
22 Azam Ahmed & Peter Lattman, "Prosecutors Draw 'Secret Pipeline' Pattern; Defense Asks, 'Where's the Beef?,'" N.Y. Times DealBook (June 13, 2012), available at <http://dealbook.nytimes.com/2012/06/13/prosecutors-draw-secret-pipeline-pattern-defense-asks-where-the-beef>.  
23 Sentencing Memorandum and Order, *United States v. Gupta*, No. 11-cr-907 (JSR) (S.D.N.Y. Oct. 24, 2012), ECF No. 127.  
24 Sentencing Memorandum of Rajat K. Gupta, *United States v. Gupta*, No. 11-cr-907 (JSR) (S.D.N.Y. Oct. 17, 2012), ECF No. 123.  
25 Order, *supra* note 23 at 2.  
26 Order, *supra* note 23 at 10.  
27 Alison Frankel, "Will Rajat Gupta Get off? 2nd Circuit Bail Ruling Offers Clues," Thomson Reuters News and Insight, Dec. 7, 2012, available at [http://newsandinsight.thomsonreuters.com/New\\_York/News/2012/12\\_-\\_December/Will\\_Rajat\\_Gupta\\_get\\_off\\_2nd\\_Circuit\\_bail\\_ruling\\_offers\\_clues/](http://newsandinsight.thomsonreuters.com/New_York/News/2012/12_-_December/Will_Rajat_Gupta_get_off_2nd_Circuit_bail_ruling_offers_clues/).  
28 See Motion for Stay of January 8, 2013 Surrender Date and for Release Pending Appeal, *United States v. Gupta*, No. 12-4448 (2d Cir. Nov. 13, 2012), ECF No. 16.  
29 Final Consent Judgment as to Raj Rajaratnam, *SEC v. Rajaratnam*, No. 11-cv-07566 (JSR) (S.D.N.Y. Dec. 26, 2012), ECF No. 59.  
30 Government's Letter Pursuant to 5K1.1 at 1, *United States v. Cardillo*, No. 11 Cr. 78 (JSR) (S.D.N.Y. Oct. 18, 2012), ECF No. 11-1.  
31 *Id.* at 12.  
32 See *United States v. Cardillo*, No. 11-cr-0078 (JSR) (S.D.N.Y. Oct. 18, 2012), ECF No. 13.  
33 See *United States v. Smith*, No. 11-cr-0079 (JSR) (S.D.N.Y. July 13, 2012), ECF No. 12; *United States v. Slaine*, No. 09-cr-1222 (RJS) (S.D.N.Y. Jan. 9, 2012), ECF No. 15; *United States v. Goel*, No. 10-cr-0090 (BSJ) (S.D.N.Y. Oct. 2, 2012), ECF No. 53; *United States v. Scolaro*, No. 11-cr-0429 (WHP) (S.D.N.Y. Aug. 14, 2012), ECF No. 16; *United States v. Kumar*, No. 10-cr-0013 (DC) (S.D.N.Y. July 20, 2012), ECF No. 50; *United States v. Tudor*, No. 09-cr-1057 (RJS) (S.D.N.Y. June 4, 2012), ECF No. 22.  
34 *United States v. Shankar*, No. 09-cr-0996 (RJS) (S.D.N.Y. Apr. 19, 2012), ECF No. 27.  
35 See Associated Press, "Analyst Who Taunted Authorities Pleads Guilty," N.Y. Times, Jul. 25, 2012, available at <http://www.nytimes.com/2012/07/26/business/john-kinnucan-pleads-guilty-to-insider-trading.html>.  
36 Jonathan Stempel, "Ex-SAC manager calls Jiau's stock tips 'perfect,'" Reuters, June 6, 2011, available at <http://www.reuters.com/article/2011/06/06/us-insidertrading-jiau-trial-idUSTRE7556Y620110606>.  
37 Order at 3, *United States v. Jiau*, No. 11-cr-00161 (JSR) (S.D.N.Y. Aug. 7, 2012), ECF No. 159.  
38 Press Release, U.S. Att'y's Off., S.D.N.Y., Statement Of Manhattan U.S. Attorney Preet Bharara On The Convictions Of Todd Newman And Anthony Chiasson (Dec. 17, 2012), available at <http://www.justice.gov/usao/nys/pressreleases/December12/ChiassonNeumanVerdict.php>.  
39 See SEC Enforcement Manual at § 6.1.1 (Nov. 1, 2012), available at <http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>. The SEC also considers the importance of the underlying matter, society's interest in holding the individual accountable, and the personal and professional profile of the individual (including the individual's history of lawfulness, degree of acceptance of responsibility, and opportunity to commit future violations).  
40 See United States Attorney's Manual at 9-27.230,9-27.740, available at [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/27mcrmm.htm#9-27.600](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/27mcrmm.htm#9-27.600).  
41 See United States Sentencing Guidelines Manual at § 5K1.1, United States Sentencing Commission (Nov. 1, 2012), available at [http://www.ussc.gov/guidelines/2012\\_Guidelines/Manual\\_PDF/Chapter\\_5.pdf](http://www.ussc.gov/guidelines/2012_Guidelines/Manual_PDF/Chapter_5.pdf).  
42 See Press Release, SEC, SEC Charges Three in North Carolina With Insider Trading (Sept. 20, 2012), available at <http://www.sec.gov/news/press/2012/2012-193.htm>.  
43 See Government's Sentencing Memorandum at 6, *United States v. Slaine*, No. 09-cr-01222 (RJS) (S.D.N.Y. Jan. 9, 2012), ECF No. 13.  
44 *Id.* at 4.  
45 Press Release, U.S. Att'y's Off., S.D.N.Y., Manhattan U.S. Attorney Announces Agreement with Diamondback Capital Management, LLC to Pay \$6 Million to Resolve Insider Trading Investigation (Jan. 23, 2012), available at <http://www.justice.gov/usao/nys/pressreleases/January12/diamondbacknpa.html>; Press Release, SEC, Diamondback Capital Agrees to Settle SEC Insider Trading Charges (Jan. 23, 2012), available at <http://www.sec.gov/news/press/2012/2012-16.htm>.  
46 One non-cooperating plea was excluded from this chart because the 6-month prison term could not be expressed as a percentage of the minimum guideline of 0 months.  
47 See *SEC v. Longoria, et al.*, No. 11-cv-00753 (JSR) (S.D.N.Y.).  
48 See Press Release, SEC, SEC Charges Three in North Carolina With Insider Trading (Sept. 20, 2012), available at <http://www.sec.gov/news/press/2012/2012-193.htm>. Notably, the tipper's settlement assessed a one-time penalty equal to the trading profits of his first-level tippee (over \$40,000). And the first-level tippee agreed in his settlement to pay the amount of penalty set by the Court.  
49 The chart and average SEC penalties referenced herein exclude proceedings involving disgorgement of less than \$25,000 and proceedings in which the SEC noted either that a penalty was yet to be determined or that no penalty was imposed

- as a result of the defendant's financial condition or a parallel criminal proceeding.
- 50 Carl H. Loewenson, Jr., *Plea Bargaining in Securities Cases*, 14 Rev. Sec. Comm. Reg. 145 (Aug. 1991).
- 51 See Press Release, SEC, SEC Brings New Charges in Insider Trading Case Against Chinese Citizens (Oct. 12, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22320.htm>; Press Release, SEC, SEC Freezes Accounts of Six Chinese Citizens and One Offshore Entity Charged with Insider Trading (April 6, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22320.htm>; Press Release, SEC, Hong Kong Firm to Pay \$14 Million to Settle Insider Trading Charges (Oct. 19, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22515.htm>.
- 52 See SEC Brings New Charges, *supra* note 51; Hong Kong Firm, *supra* note 51; Press Release, SEC, SEC Charges Multiple Individuals and Entities in the U.S. for Widespread Misconduct in Connection with Chinese Reverse Merger Company (July 30, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22430.htm>; Press Release, SEC, SEC Charges Five with Insider Trading on Confidential Merger Negotiations Between Philadelphia Company and Japanese Firm (Mar. 14, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22288.htm>; Press Release, SEC, Hedge Fund Manager to Pay \$44 Million for Illegal Trading in Chinese Bank Stocks (Dec. 12, 2012), available at <http://www.sec.gov/news/press/2012/2012-264.htm>.
- 53 See Press Release, U.S. Att'y's Off., D.N.J., International Hedge Fund Pleads Guilty To Wire Fraud Scheme and Agrees To Forfeit More Than \$16 Million In Illegal Profits (Dec. 12, 2012), available at <http://www.justice.gov/usao/nj/Press/files/Tiger%20Asia%20Plea%20and%20Sentencing%20News%20Release.html>.
- 54 See *supra* notes 51, 52.
- 55 See Hedge Fund Manager, *supra* note 52.
- 56 See Press Release, SEC, Brazilian Ex-Banker to Pay \$5.1 Million for Insider Trading in Burger King Stock (Nov. 30, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22554.htm>. One defendant settled, agreeing to disgorge his \$1.68 million in profits and to pay a civil penalty of \$3.4 million.
- 57 See Press Release, SEC, British Virgin Islands Corporation and Resident of Switzerland Settle Charges of Insider Trading in the Options of Intermune, Inc. (Mar. 30, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22312.htm>.
- 58 See Press Release, U.S. Att'y's Off., S.D.N.Y., French Doctor Sentenced in Manhattan Federal Court for Insider Trading Scheme (Dec. 21, 2011), available at <http://www.justice.gov/usao/nys/pressreleases/December11/benhamouyvessentencingpr.pdf>.
- 59 See Press Release, SEC, SEC Obtains Dismissal of Complaint Without Prejudice Against Three Swiss Entities in Insider Trading Case (May 29, 2012), available at <http://www.sec.gov/litigation/litreleases/2012/lr22378.htm>; *United States v. Singhal*, 876 F. Supp. 2d 82 (D.D.C. 2012).
- 60 SEC Obtains Dismissal, *supra* note 59.
- 61 See *SEC v. Garcia*, No. 10-cv-5268, 2011 WL 6812680, at \*9-10 (N.D. Ill. Dec. 28, 2011).
- 62 See "San Francisco Resident Sentenced to 11 Months in Prison for Obstructing SEC Insider Trading Investigation," Chicago Press Release Services (Nov. 9, 2011), available at <http://chicagopressrelease.com/news/san-francisco-resident-sentenced-to-11-months-in-prison-for-obstructing-sec-insider-trading-investigation>.
- 63 See *id.*; Press Release, SEC, SEC Settles Claims in International Insider Trading Scheme (Oct. 25, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr22139.htm>.
- 64 See Press Release, FSA, Three guilty of insider dealing (May 28, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/060.shtml>.
- 65 As a point of comparison, the Wall Street Journal reported that, as of October 1, 2012, the U.S. Attorney's Office for the Southern District of New York alone had secured 69 convictions for insider trading since October 2009. See Cassell Bryan-Low, "Four Charged in U.K. Insider-Trading Probe," Wall St. J., Oct. 1, 2012, available at <http://online.wsj.com/article/SB10000872396390444592404578030212444472732.html>.
- 66 See Press Release, FSA, Insider dealers ordered to pay £1.5m in confiscation (Aug. 20, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/082.shtml>; Press Release, FSA, Investment banker, his wife and family friend sentenced for insider dealing (Feb. 2, 2011), available at <http://www.fsa.gov.uk/library/communication/pr/2011/018.shtml>.
- 67 See Press Release, FSA, Six sentenced for insider dealing (Jul. 27, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/080.shtml>. This topped a 3 year, 4 month sentence imposed on a defendant in the case cited *supra* in note 66.
- 68 See Press Release, FSA, David Einhorn and Greenlight Capital Inc. fined £7.2m for trading on inside information in Punch Taverns Plc. (Jan. 25, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/005.shtml>.
- 69 See Press Release, FSA, Six found guilty of operating insider dealing ring (Jul. 23, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/076.shtml>; Six sentenced, *supra* note 67.
- 70 See Press Release, FSA, Four charged with insider dealing (Oct. 1, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/090.shtml>.
- 71 See FSA Decision Notice, Michael Einhorn, at para 3.21 (Jan. 12, 2012), available at <http://www.fsa.gov.uk/static/pubs/decisions/dn-einhorn-greenlight.pdf>.
- 72 See *id.* at paras 3.23, 4.16-4.17, 5.8; David Einhorn, *supra* note 68.
- 73 See Press Release, FSA, Former corporate broker at Merrill Lynch fined £350,000 for disclosing inside information (Feb. 16, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/014.shtml>; FSA Decision Notice, Andrew Osborne, at para 5.7 (Feb. 15, 2012), available at [http://www.fsa.gov.uk/static/pubs/final/andrew\\_osborne.pdf](http://www.fsa.gov.uk/static/pubs/final/andrew_osborne.pdf).
- 74 See Press Release, FSA, FSA decides to fine Ian Hannam Chairman of Capital Markets at J P Morgan Cazenove for market abuse (Apr. 3, 2012), available at <http://www.fsa.gov.uk/library/communication/pr/2012/036.shtml>; FSA Decision Notice, Ian Hannam, at para. 5.6 (Feb. 17, 2012), available at <http://www.fsa.gov.uk/static/pubs/final/ian-hannam.pdf>.
- 75 See Karin Matussek, "Munich Prosecutors Conduct Raids in Insider-Trading Case," Bloomberg, Mar. 1, 2012, available at <http://www.bloomberg.com/news/2012-03-01/munich-prosecutor-probe-stock-fraud-market-manipulation-case.html>.
- 76 See Keith Goldberg, "Prosecutors To Probe Hermes' LVMH Insider Trading Claims," Law360, Oct. 12, 2012, available at <http://www.law360.com/articles/386438/print?section=competition>.
- 77 See Amanda Bransford, "Swiss National Bank Directors Cleared Of Insider Trading," Law360, Mar. 7, 2012, available at <http://www.law360.com/securities/articles/317210/swiss-national-bank-directors-cleared-of-insider-trading>.
- 78 See Heather Smith, "French Regulator Fines Seven for Insider Trades on BT-Net2S Deal," Bloomberg, Oct. 2, 2012, available at <http://www.bloomberg.com/news/2012-10-02/french-regulator-fines-seven-for-insider-trades-on-bt-net2s-deal.html>.
- 79 See Amanda Bransford, "European Court Denies Soros Insider Trading Appeal," Law360, Mar. 29, 2012, available at <http://www.law360.com/articles/324121/print?section=appellate>. Although finding "that there had been no comparable precedent" in French law at the time of Soros's trades, the Court ruled that he "should have been particularly prudent" when transacting in the stock.
- 80 See European Securities Markets Authority, "Report on actual use of sanctioning powers under MAD," Apr. 26, 2012, available at <http://www.esma.europa.eu/system/files/2012-270.pdf>.

- 81 See “Insider trading: ‘No safe haven for those intent on committing abuse,’” European Parliament News, Oct. 10, 2012, available at <http://www.europarl.europa.eu/news/en/headlines/content/20121005STO53037/html/Insider-trading-no-safe-haven-for-those-intent-on-committing-abuse>.
- 82 See Press Release, Financial Services Agency, Press Conference by Shozaburo Jimi, Minister for Financial Services (May 29, 2012), available at <http://www.fsa.go.jp/en/conference/minister/2012/20120529.html>.
- 83 See “Former HAECO director convicted of insider dealing,” Sec. and Futures Comm’n (Feb. 27, 2012), available at <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=12PR17>.
- 84 See “Court of Appeal upholds Du Jun’s insider dealing convictions,” Sec. and Futures Comm’n (Sep. 20, 2012), available at <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=12PR101>; Natasha Khan, “Ex-Morgan Stanley MD Hong Kong Insider-Trading Conviction Upheld,” Bloomberg, Sep. 20, 2012, available at <http://www.bloomberg.com/news/2012-09-20/ex-morgan-stanley-md-hong-kong-insider-trading-conviction-upheld.html>.
- 85 See Former HAECO director, *supra* note 86.
- 86 See *id.*
- 87 See “MAS Takes Civil Penalty Enforcement Action Against Mr Shi Jiangtao for Contravening Provision to Prevent Insider Trading,” Monetary Auth. of Singapore, Sep. 10, 2012, available at <http://www.mas.gov.sg/en/News-and-Publications/Press-Releases/2012/MAS-Takes-Civil-Penalty-Enforcement-Action-Against-Mr-Shi-Jiangtao.aspx>. Similarly, the Australian Securities & Investments Commission brought another case in 2012 involving insider trading and CFDs. The action involved serial insider trading, using CFDs, by a former vice president in a Chinese iron ore company. See “12-179MR Former Hanlong mining executive pleads guilty to serial insider trading,” Austl. Sec. Inv. Comm., Jul. 31, 2012, available at <http://www.asic.gov.au/asic/asic.nsf/byheadline/12-179MR+Former+Hanlong+mining+executive+pleads+guilty+to+serial+insider+trading?openDocument>.
- 88 “60 Minutes: Congress: Trading stock on inside information?,” CBS television broadcast, Nov. 13, 2011, available at [http://www.cbsnews.com/8301-18560\\_162-57323527/congress-trading-stock-on-inside-information/](http://www.cbsnews.com/8301-18560_162-57323527/congress-trading-stock-on-inside-information/).
- 89 Jonathan Macey, “Congress’s Phony Insider-Trading Reform,” Wall St. J., Dec. 13, 2011, available at <http://online.wsj.com/article/SB10001424052970203413304577088881987346976.html>.
- 90 <http://www.whitehouse.gov/the-press-office/2012/04/04/fact-sheet-stock-act-bans-members-of-Congress-from-Insider-Trading.html> (April 4, 2012).
- 91 *Id.*
- 92 Deirdre Walsh & Dana Bash, “Congress Closes Loophole in Stock Trading Law after CNN Report” CNN, Aug. 3, 2012, available at <http://www.cnn.com/2012/08/02/politics/stock-act-loophole/index.html>.
- 93 *Id.*
- 94 Complaint at 15, *Senior Exec’s Assoc. v. United States*, No. 12-cv-2297 (AW) (D. Md. Aug. 2, 2012), ECF No. 1.
- 95 Order at 1, *Senior Exec’s Assoc. v. United States*, No. 12-cv-2297 (AW) (D. Md. Sep. 13, 2012), ECF No. 27.
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