2011

INSIDER TRADING

ANNUAL REVIEW

MORRISON | FOERSTER

WHAT'S INSIDE

LOOKING BACK

2011 gave us another year of highly-publicized success for enforcement of insider trading laws. The Department of Justice ("DOJ") won a conviction at trial in the biggest insider trading case in decades. In the rest of its insider trading trials, the government had a perfect record. The government often did not get what it sought at sentencing, however, with sentencing judges frequently handing down sentences that were below the Sentencing Guidelines range and below what the government had requested.

The Galleon insider trading ring has been playing out for the last two years, but 2011 saw its culmination in the trial conviction of Raj Rajaratnam. While district courts, including the *Rajaratnam* court, uniformly approved law enforcement's use of wiretaps in insider trading prosecutions, those decisions now face appellate review. And as a sequel to the *Rajaratnam* trial, in late 2011 the government brought charges in the high-profile insider trading case against alleged Rajaratnam tipper Rajat Gupta, a former chief executive of McKinsey & Co. and a Goldman Sachs board member. Throughout 2011, the government continued its pursuit of hedge funds and their sources of inside information, including expert networks and attorneys.

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 his or her own company and disclose such transaction to the Securities and Exchange Commission ("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 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 secret information taken from the company in violation of the insiders' fiduciary duty to the company and its shareholders.[1] 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.[2]

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, the law holds liable any "tippee"—that is, someone with whom that person, the "tipper," shares the information—as long as the tippee also knows that the information was obtained in breach of a duty. 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.[3] 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.[4]

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 to bring a civil lawsuit against anyone trading while in possession of material nonpublic information.[5] 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.

2011 ENFORCEMENT ACTIVITY

In 2011, the SEC filed 44 insider trading actions, and the DOJ brought criminal charges involving insider trading against 33 individuals. The combined total of civil and criminal cases brought in 2011 increased approximately 33% from 2010. The "detection and prosecution" of insider trading remained one of the "highest priorities"[6] for both the DOJ and the SEC in 2011. While the SEC and DOJ have been criticized, fairly or not, for not bringing more cases arising from the financial crisis, both agencies have received abundant praise for their crackdown on insider trading. Insider trading cases, when compared to the sprawling financial crisis investigations of such institutions as Lehman Brothers or AIG Financial Products, tend to be easier to investigate and easier to explain to a jury.

Law enforcement agents revealed in 2011 that, more than five years ago, the FBI New York Field Office launched "Operation Perfect Hedge," a nationwide insider trading investigation of a size not seen since the days of Ivan Boesky and Dennis Levine and the largest insider trading investigation ever relating to hedge funds.[7] According to FBI agents David Chaves and Patrick Carroll, the massive investigation was launched in response to receiving intelligence that "a surge in profits at hedge funds might be the result of an epidemic of insider trading."[8] Operation Perfect Hedge made a household name of Raj Rajaratnam and his hedge fund Galleon Management LLP, and 2011 saw the culmination of the government's efforts in the trial and conviction of Rajaratnam. In 2011, Operation Perfect Hedge also entangled many formerly well-respected financial, legal and consulting professionals.

A remarkable aspect of Operation Perfect Hedge is the intertwining webs of trading conspiracies uncovered across various industries, countries and individuals. As one FBI agent noted, "That's what was so amazing, that everyone who started cooperating seemed to know everyone else. . . . [W]e began to see that, as big as this industry is, it's also small, at least the core of people who were engaged in this conduct."[9] The growing web continued to snare new defendants throughout 2011 and into early 2012.

Under Operation Perfect Hedge, 63 individuals have been charged with insider trading. At least 50 of those individuals have entered guilty pleas or been convicted after trial. All six defendants who went to trial in 2011 lost. Typical ingredients of these trials were wiretaps, multiple cooperating witnesses, and often overwhelming circumstantial evidence.

HIGHLIGHTS OF GOVERNMENT ENFORCEMENT EFFORTS

A. *GALLEON* UPDATE

1. RAJ RAJARATNAM CONVICTED

The highlight of the government's enforcement efforts in 2011 was the conviction of Raj Rajaratnam. After an eight-week trial and 12 days of deliberations, on May 11, 2011, a federal jury in the Southern District of New York found Rajaratnam guilty of all 14 counts of conspiracy and securities fraud.

The trial of Rajaratnam has been called by many commentators the biggest trial in the history of insider trading. The trial allowed a rare inside glimpse of the operations of a high-powered hedge fund that made illicit profits of more than $50 million. The corporate insiders who provided the material nonpublic information on which Rajaratnam traded were elite professionals associated with blue-chip companies such as Intel, IBM, McKinsey, and Goldman Sachs.[10] According to prosecutors, what made Rajaratnam stand out as a profitable investor was his deep set of contacts with industry insiders. As one of the prosecutors argued to the jury, "Getting information that others didn't have was very valuable. It meant the defendant knew tomorrow's news today, and it meant big money."[11]

In the five-week government case, prosecutors called 18 witnesses. Jurors listened to 45 secretly recorded telephone conversations between Rajaratnam and his alleged accomplices (whittled down from 18,000 calls the government had wiretapped during Operation Perfect Hedge). In one of the calls, for example, Rajaratnam was heard telling a Galleon employee that he "heard yesterday from somebody who's on the board at Goldman Sachs that they are going to lose $2 per share. . . . The Street has them making $2.50."[12] Jurors also heard from three cooperating witnesses: (1) Anil Kumar, a former McKinsey consultant whom the government said Rajaratnam paid $500,000 a year in exchange for inside information on publicly traded companies; (2) Adam Smith, a former Galleon trader who described the inner workings of Galleon and testified that legitimate information and illicit tips were known within

Galleon as "having two torpedoes in the water; if one misses, the other is likely to hit;"[13] and (3) Rajiv Goel, a mid-level Intel manager who had been Rajaratnam's classmate at the Wharton Business School, and whom the government alleged netted more than $1 million by providing Rajaratnam with Intel's corporate secrets. All three cooperating witnesses had entered guilty pleas to insider trading prior to the trial.

Throughout the case, Rajaratnam's lawyers maintained that he had "only traded stocks based on public information, expert research and analysis conducted by Galleon."[14] The defense attacked the insider trading charges on the basis that the information that Rajaratnam and his alleged accomplices swapped in the taped conversations was information that was widely known. Through an expert witness, Rajaratnam explained the practices of sophisticated investors and how confidential information can leak out of companies without a misappropriation. Rajaratnam's lawyers made the point that Rajaratnam only took "advantage of public information available to the whole world."[15] The defense attempted to paint a picture—through Galleon employees and expert witnesses—that Rajaratnam's trades were based on a "mix of information available in the marketplace and within Galleon."[16] Rajaratnam's counsel argued that the trades were proper under the "mosaic theory" of trading in which a trader "assemble[s] pieces of non-public and immaterial information into a mosaic that reveals a material conclusion."[17]

The jury was having none of it. The wiretapped conversations, the cooperating witnesses, and the trading patterns proved too much for the defense to explain away. The conviction raised alarms in some corners of the hedge fund industry that the mosaic theory was in danger. Some feared that traders and portfolio managers could no longer try to piece together various tidbits of non-material information obtained from company insiders into a meaningful—material—mosaic. As explained below in Section B, however, rumors of the demise of the mosaic theory are greatly exaggerated.

Rajaratnam was sentenced to a record 11 years in prison—the longest prison sentence ever for insider trading. He was also ordered to pay $54 million in criminal forfeiture. Relying on the criminal conviction, in the parallel SEC case the court granted the SEC's motion for summary judgment and ordered Rajaratnam to pay a penalty of $92.8 million. Rajaratnam began serving his sentence on December 5, 2011.

2. ON APPEAL: WIRETAP EVIDENCE

Rajaratnam's lawyers have stated that he intends to appeal his conviction and sentence.

Central to Rajaratnam's appeal is the legality of the wiretapped evidence used against him. Rajaratnam did not testify at trial. Although he remained silent for the entire trial, in the end, as stated by the prosecutor in the closing argument, the most "devastating" evidence against Rajaratnam was his own voice heard in the recorded conversations. Commenting on the guilty verdict, George Canellos, Director of the SEC's New York Regional Office, said: "There is no better evidence than tape recorded evidence."[18]

As we reported in our 2010 Year End Review, Rajaratnam moved to suppress the wiretap evidence in the criminal case on the basis that: "(1) the government was not entitled to use wiretaps to investigate insider trading, a crime not specified in Title III; (2) the government's application and supporting affidavits failed to establish probable cause; (3) the government's application and supporting affidavits failed to establish the inadequacy of conventional investigative procedures and, therefore, the 'necessity' of using wiretaps; and (4) the government failed to minimize various conversations."[19] The defendants sought an evidentiary hearing under *Franks v. Delaware*, at which defense counsel could question government agents regarding the factual allegations that supported the wiretap application.[20]

In November 2010, Judge Holwell denied the motion to suppress after the *Franks* hearing and found that the wiretap evidence had been lawfully obtained through a valid warrant application. Judge Holwell rejected the four arguments and found that "[b]ecause Title III authorizes the government to use wiretaps to investigate wire fraud, the government was authorized to use wiretaps to investigate a fraudulent insider trading scheme using interstate wires even though Title III does not specifically authorize wiretaps to investigate insider trading alone."[21] For decades, the government has typically charged insider trading as securities fraud, wire fraud, and mail fraud. In one of the early tests of the misappropriation theory in the *Wall Street Journal* insider trading case against R. Foster Winans and others, the United States Supreme Court in *Carpenter v. United States* split 4-4

on the securities fraud counts but affirmed 8-0 on the wire fraud and mail fraud counts.[22] Relying on the *Carpenter* case and the legislative history of the Insider Trading and Securities Fraud Enforcement Act of 1988, Judge Holwell found that defendants' argument "unrealistically assumes a gulf between" insider trading and wire fraud, and that "Congress . . . and the Supreme Court have both endorsed" charging both kinds of fraud for the same core conduct.[23]

The court also found that the affidavit in support of the warrant—although containing some immaterial misstatements—sufficiently demonstrated the necessary probable cause. As Judge Holwell wrote, "Adding it all up, and correcting the affidavit to account for the government's misstatements and omissions, the Court believes that there were enough facts for [the district court] to have found probable cause."[24] The court acknowledged that the government had misled the court by failing to disclose in its warrant application that the SEC had been conducting an on-going investigation into the same activity the wiretap was intended to expose. But even with this "glaring omission," Judge Holwell determined that the government's wiretap application demonstrated the need for the wiretaps.

During a May 2011 interview, former prosecutor Canellos acknowledged that wiretapping is not appropriate for every insider trading case. He conceded that there are "very rigorous legal standards that apply."[25] As he explained:

> Very often in the insider trading context historically cases have involved opportunistic insider trading by an investment banker who happens to come into possession of inside information and uses it. Only when you have really an institutionalized recurring pattern of illegal activity can you use [a wiretap]. That's what's so notable about the conduct in the Rajaratnam case.[26]

3. OCTOPUSSY AND HIS FRIENDS

Days after the *Rajaratnam* trial ended, the trial of three traders, Zvi Goffer, his brother Emanuel Goffer, and Michael Kimelman started. Zvi Goffer, nicknamed Octopussy by his co-conspirators because his arms reached so many sources of information, was a former Galleon employee who left to work at another hedge fund and then started his own trading firm. At the trial, the government proved that the three defendants received information about pending transactions from a lawyer, Jason Goldfarb, who was getting his information from two lawyers who were misappropriating information from their employer, the law firm Ropes & Gray. At the trial, one of the Ropes & Gray lawyers—who had pleaded guilty to his own charges of insider trading—testified that he was paid more than $32,000 by Goldfarb for confidential information about deals involving Ropes & Gray's clients. In the parallel SEC case, the government contends that the scheme netted the defendants $20 million.

Having just won the *Rajaratnam* trial, the government employed a similar strategy and relied heavily on wiretapped conversations to prove its case. The taped conversations included conversations with Rajaratnam. The jury convicted the three defendants of all charges. Zvi Goffer was sentenced—just a day before Rajaratnam—to a then-record-breaking 10 years in prison. The record lasted for only a day.

The defendants in the *Goffer* case had moved pretrial to suppress the wiretap evidence, offering essentially the same arguments as had Rajaratnam. In an oral order on January 5, 2011, Judge Richard Sullivan denied the motion and ruled the wiretap evidence admissible, noting: "[T]he defendants move to suppress the wire because Title III does not enumerate insider trading as a predicate offense, which it doesn't, of course. However, wire fraud is a predicate offense under Title III, and the applications of the government were very explicit that that was one of the crimes being investigated. There was no attempt to hide the ball with respect to the insider trading conspiracy. I will note that Judge Holwell explicitly rejected this very same argument in the *Rajaratnam* case."[27] Judge Sullivan also found that the government had established necessity, probable cause, and sufficient minimization.

The *Goffer* defendants are appealing their convictions.

4. THE "BIGGER FISH"

In the sequel to *Rajaratnam*, on October 26, 2011, a grand jury handed down an indictment containing insider trading charges against Rajat Gupta, a former chief of McKinsey & Co. and former board member of both Goldman Sachs and Procter & Gamble.[28] Gupta is the highest-ranking corporate insider caught up in the insider trading web uncovered by Operation Perfect Hedge. Gupta pleaded not guilty to all charges, setting the stage for a fierce legal battle in 2012. Gupta's criminal trial is scheduled to begin in front of Judge Jed Rakoff on April 9. The parallel SEC civil trial is set to start in October.

The government alleges that Gupta enjoyed a close personal and business relationship with Rajaratnam, and that Gupta periodically leaked material nonpublic information to Rajaratnam, who used the information to execute illegal trades. Specifically, the government alleges that on September 23, 2008, near the height of the financial crisis, Gupta learned in a teleconference with the Goldman Sachs Board that the Board had approved a $5 billion investment by Warren Buffett's Berkshire Hathaway. According to the indictment, 16 seconds after disconnecting from the teleconference, Gupta called Rajaratnam to tell him of the Buffett investment, prompting Rajaratnam to execute illegal trades in Goldman Sachs stock within minutes. The government alleges that, in recorded calls the following morning—the same calls played for the jury at the Rajaratnam trial—Rajaratnam told a trader at Galleon that he had received a call the previous afternoon and, in one call, said he had learned something "good was going to happen to Goldman Sachs."[29] In addition, the government alleges that Gupta passed confidential information to Rajaratnam obtained from Gupta's board position at Procter & Gamble.

The *Gupta* trial is likely to raise interesting questions about well-established insider trading law principles. In *Dirks v. SEC*, the U.S. Supreme Court ruled that a tipper—such as Gupta is alleged to be—violates the securities laws when he discloses material nonpublic information in breach of a fiduciary duty for his "personal benefit."[30] The indictment asserts that Gupta "provided the Inside Information to Rajaratnam because of [his] friendship and business relationships with Rajaratnam."[31] According to the government, Gupta "benefitted and hoped to benefit from his friendship and business relationships with Rajaratnam in various ways, some of which were financial."[32] But, as Gupta alleges in his motion to dismiss the indictment, "[T]here is no allegation that [] Gupta engaged in any securities trades relating to the purported scheme. Nor is there any allegation that [] Gupta ever received money, or participated in the profits from trades that Rajaratnam conducted, as a *quid pro quo* for supplying Rajaratnam with inside information."[33] For the government to prevail at trial, it will need to prove that Gupta's alleged disclosure resulted in a personal benefit to Gupta.

In addition, DOJ's case against Gupta will have to proceed largely based on circumstantial evidence and timing of trades—which has historically formed the basis of insider trading cases. Unlike the other Galleon Group prosecutions, the government does not have wiretapped conversations between Gupta himself and Rajaratnam discussing the two trades Rajaratnam allegedly made using Gupta's inside information. Rather, the government will have to tie the timing of the calls between Gupta and Rajaratnam from Gupta's telephone records to Rajaratnam's trading activity.

The presence of wiretap evidence is nonetheless likely to play a key role in Gupta's trial. The government will seek to admit recordings of Rajaratnam boasting to third parties that he had information he learned from a source at Goldman Sachs—who, although not named in the taped conversations, is allegedly Gupta. To start 2012, Gupta moved to suppress the wiretap evidence on the grounds the interceptions on Rajaratnam's cell phone were unlawful because: (1) Title III does not permit prosecutors and investigators to use wiretaps in investigations of suspected insider trading; (2) the *Rajaratnam* court's factual findings regarding how the wiretap warrant was obtained compel the conclusion that the government violated Title III, "which explicitly requires all wiretap applications to provide a 'full and complete statement' of circumstances establishing conventional investigative techniques had proved ineffective" and that use of a wiretap was therefore necessary; and (3) had the government provided the courts that permitted the wiretaps the requisite "'full and complete statement' of facts and circumstances, its applications could not have supported a judicial finding . . . that wiretapping (as opposed to conventional techniques) was necessary."[34] Addressing the *Rajaratnam* ruling—which specifically discounted the same arguments Gupta advanced in his motion to suppress—Gupta's counsel "respectfully submit[ted] that the conclusion in *Rajaratnam* was incorrect."[35] In its opposition to the motion to suppress, the government capitalized on Rajaratnam's "failed attempt to suppress the wiretap evidence" and urged the court to discount Gupta's "mimicked" arguments.[36]

Gupta has yet to reply to the government's opposition. Nevertheless, Gupta appears to be facing an uphill battle. At a pre-trial hearing on January 5, 2012,

Judge Rakoff commented, "This is a different defendant and he may be entitled to be heard on [the motion to suppress] but looking at it realistically, if I were the defense I would not be too optimistic about this particular motion. . . . Essentially this has been ruled on in great length in the *Rajaratnam* case by Judge Holwell."[37]

With Judge Holwell, Judge Sullivan, and most likely Judge Rakoff permitting wiretap evidence in insider trading cases, it is likely law enforcement will be emboldened to continue using this aggressive investigative tactic. While the recent decisions on wiretap suppression motions have approved generally of the use of wiretaps in insider trading (wire fraud) investigations, that does not mean that future defendants will have no grounds on which to move to suppress wiretap evidence. Title III contains a number of traps for the unwary prosecutor, and courts may not be as forgiving of investigative error as they have been in permitting wiretap evidence in organized crime and narcotics prosecutions.

B. EXPERT NETWORK CASES

As we noted in last year's Review, the "expert network" cases burst onto the stage at the end of 2010. Using information learned through the wiretaps that were originally part of the *Galleon* investigation, the government widened the probe to snag more insider trading defendants in cases involving the expert network firms. By the end of 2011, in the expert network cases, the government had charged 18 individuals—two of whom were convicted after jury trials, while the remaining 16 entered guilty pleas. And the government got off to a quick start in 2012, with predawn arrests on January 17 of four individuals from hedge funds associated with the expert network cases: Diamondback Capital Management, Level Global Investors 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. All seven defendants are alleged to be part of the "circle of friends who essentially formed a criminal club . . . where everyone scratched everyone else's back."[38]

1. WHAT ARE EXPERT NETWORK FIRMS?

"Expert network firms" are research consulting firms that act as matchmakers connecting clients—mostly institutional investors such as hedge funds—with persons who can provide market intelligence based on specialized expertise in the clients' areas of interest. The research outfits pool together vast networks of experts who can provide unique perspectives and insight into various industries. These experts can include professors, scientists, engineers, suppliers, and former employees. For their services, the research firms charge investors hourly or annual fees (which can be as high as hundreds of thousands of dollars per year). Expert network firms have become a mainstay on Wall Street.

The entire point of expert network firms is to give investors an advantage. Investors pay a premium to gain insight into an industry with the obvious goal of making a profit. Expert network firms are entirely legal as long as the information that is passed from the research firm to the client is not material nonpublic information obtained in breach of a duty. An expert could provide valuable insights about entirely public, albeit obscure or diffuse, information. Investors may pay for immaterial nonpublic information because it could be valuable in understanding trends in a particular company or industry. In such instances, investors are paying for good research, not inside information.

The SEC itself has recognized the validity of investors compiling disparate pieces of information through analysis and research to decide how to trade. Known as the "mosaic theory," the SEC acknowledges that an investor can legally piece together tidbits of immaterial nonpublic information that reveals a material conclusion.[39] For the theory to be valid, however, none of the pieces of the mosaic may by themselves be material nonpublic information. For example, regardless of the source, whether a company will or will not make its numbers in its next earnings release is considered material nonpublic information—not just a tidbit that helps to "complete a 'mosaic.'"[40] Expert network firms have traditionally—and legally—been used to obtain pieces of information that fit into the total mosaic of information about an issuer.

2. MORE BLACK AND WHITE THAN GRAY

The recent aggressive enforcement activity against expert networks has led to much speculation as to where the government believes the line is drawn between permissible and impermissible use of expert networks. Industry insiders worry that regulators are attacking "business as usual" and question whether the use of expert networks can legally continue. Although throughout 2011 many commentators speculated about the "rather gray area"[41] of expert

networks, the enforcement actions in 2011 have demonstrated that there is a "pretty bright line"[42] between the legal use of expert networks and insider trading. As U.S. Attorney Preet Bharara has noted, "[I]f business as usual means violating the securities laws then business as usual has to stop."[43]

Thus far, the cases the government has brought allege clear abuses of material nonpublic information. The DOJ alleges that the expert network firms involved in these cases were used as cover to pay insiders or affiliates for material nonpublic information which they had a duty to keep confidential. For example, as Mr. Bharara announced in connection with the charges against Samir Barai, Donald Longueuil, Jason Pflaum, and Noah Freeman, the complaint against these individuals "alleges hard core insider trading in stock after stock—people blatantly trafficking in material non-public information."[44] FBI Assistant Director-in-Charge Janice Fedarcyk echoed Mr. Bharara: "The Complaint gives a clear picture of the cynicism that underlies the so-called 'research' these defendants relied on. When you are paying insiders for earnings data before it's announced, that isn't 'research.' That's cheating."[45]

Trying to dispel the growing "urban legends and misunderstandings" about the regulators' position on expert networks and the mosaic theory, Carlo V. di Florio, Director of the SEC Office of Compliance Inspections and Examinations, commented earlier this year:

> Contrary to some reports that I have seen, I believe [the expert network] cases do not represent some inherent hostility by the Commission toward expert networks, nor do they indicate that the Commission is seeking to undermine the mosaic theory, under which analysts and investors are free to develop market insights through assembly of information from different public and private sources, *so long as* that information is not material nonpublic information obtained in breach of or by virtue of a duty or relationship of trust and confidence.[46]

Mr. di Florio underscores the government's position that there is nothing illegal about connecting investors with industry experts, but it is illegal when the information the experts are providing is material nonpublic information obtained in breach of a duty. Of course, the question of what constitutes material information leaves room for interpretation. But, at least the cases the government decided to bring in 2011 involved more "black and white" than gray.

For example, in the case against Winifred Jiau, a former Primary Global Research LLC consultant and the first defendant to be convicted of insider trading in connection with the expert networks investigations, the jury took fewer than six hours to convict. One of the jurors explained after the verdict: "The evidence [against Jiau] was so strong nobody had to spend a lot of time to make a decision."[47] During the trial, Noah Freeman, a former portfolio manager at SAC Capital Advisors who had entered a plea of guilty to insider trading, testified that Jiau tipped him about results and trends at chipmakers Marvell Technology and Nvidia Corp. According to Freeman, Jiau "provided us with almost the complete financial results before they were announced."[48] He told the jury that the information he got from Jiau "gave us the ability to know what the company was going to say before they said it. That gave us a huge leg up."[49] In return for this information, Freeman and other hedge fund managers paid Jiau more than $200,000 and gave her restaurant gift certificates, iPhones, and a dozen lobsters.

The government's prosecution of James Fleishman, a former colleague of Jiau at Primary Global, also focused on the nature of confidential information. The government alleged that Fleishman connected public company insiders to hedge fund employees knowing that those insiders would divulge material nonpublic information about their companies to the hedge fund employees. Fleishman's case was different from the other expert network cases 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 that it would be harder for the government to establish that Fleishman was privy to misappropriated information. Nonetheless, the DOJ's theory of the case, as summarized during closing arguments, was that "this case at the end [was] going to be about whether James Fleishman agreed with others to pass confidential information."[50] To support its theory, the government introduced wiretapped conversations[51] and evidence from cooperating witnesses who worked as consultants for Primary Global. For example, Mark Anthony Longoria testified that he provided actual and forecast numbers as well as top line revenue and gross margin numbers for Advanced Micro Devices, Inc. ("AMD") to Primary Global's clients. The evidence at trial showed that

Fleishman was aware that the numbers were material to AMD's stock price. A Primary Global employee (also charged with insider trading) testified that Fleishman directed him to call Longoria to obtain information and provide it to a client urgently because Fleishman knew the information would be important for a stock play prior to AMD's upcoming earnings announcement.[52] As with Jiau, the jury deliberated for only a few hours and returned a guilty verdict.

Likewise, the case against Joseph "Chip" Skowron, a former portfolio manager for FrontPoint Partners, involved quintessential material nonpublic information. The government alleged that Skowron received material nonpublic information from Yves Benhamou, a French doctor, who worked as a consultant to Human Genome Sciences Inc. and, at the same time, worked for Guidepoint Global, an expert network firm. According to the government, FrontPoint hired and paid Guidepoint $900,000 to gain access to the company's network experts, including Benhamou. The government charged that in violation of FrontPoint's and Guidepoint's ethics rules, Skowron cut a side deal with Benhamou to pay him in exchange for information on Human Genome. What followed could be the sequel to *The Bourne Ultimatum*, with meetings between the brilliant French researcher and the dashing American financier involving envelopes filled with cash on location in Barcelona, Milan, and Manhattan. Benhamou tipped Skowron about the adverse results of the clinical trials and of Human Genome's decision to discontinue the clinical trials. Skowron was able to sell all of FrontPoint's shares in Human Genome before Human Genome made the public announcement that it had ended the clinical trials and before the company's stock dropped 44%. After Benhamou agreed to plead guilty and cooperate with the government's investigation, Skowron also entered a plea of guilty. Commenting on Skowron's five-year prison sentence, U.S. Attorney Bharara noted that "Chip Skowron's medical training and expertise, along with his knowledge of the health care industry, undoubtedly gave him a legitimate trading edge. But that wasn't enough—he still took a corrupt path to protect his hedge fund and himself from sustaining a multi-million-dollar loss. . . ."[53]

3. FUTURE OF EXPERT NETWORKS

The government has said that the insider trading probe into the use of expert network firms is ongoing and expected to "continue for some time."[54] In a May filing in the *Fleishman* case, the government noted that it was still sifting through evidence—including wiretap information on at least 50 hedge funds. The government's threat that further charges against others were expected came true in the first weeks of 2012 with the arrests of seven employees at prominent financial firms. And FBI Assistant Director-in-Charge Janice K. Fedarcyk has made clear that the latest arrests were not the last.[55]

Even with the promise of future enforcement actions, regulators in 2011 made clear that there is nothing *per se* illegal about connecting investors with industry experts. Expert networks need not be avoided. After all, "[i]nformation networks when properly designed are just another type of research and hiring them is consistent with what institutional investors should do."[56] But, as Mr. di Florio explained, advisers relying on expert networks need to have "reasonable policies to prevent insider trading."[57] On the front end, controls should include: (1) reviewing the terms of agreements with expert network firms; (2) having adviser staff read and acknowledge the adviser's insider trading policies; and (3) pre-approving every conversation with an expert. On the back end, controls could include obtaining certifications from the employees who use expert networks that they are not trading on insider information as well as testing the employees' trades after the conversation with the expert. Each company should be aware of the risks it faces and ensure that it "build[s] appropriate controls around information obtained from expert networks."[58]

C. OTHER NOTABLE DEVELOPMENTS

1. CONTINUED ATTENTION ON HEDGE FUNDS

With the revelation of Operation Perfect Hedge, it is not surprising that hedge funds in 2011 continued to be a central focus of the government's investigation and prosecution of insider trading. After years of high returns for many hedge funds and little to no regulatory oversight of hedge funds, the government seems to be taking a hard look at whether smart investing, or illegal advantage, drove that growth at particular funds.

2011 saw the dramatic closure of a number of hedge funds embroiled in insider trading scandals. Notably, some of the hedge funds that closed—although implicated—were not charged with any wrongdoing. For example, Level Global was

raided by the FBI in February 2011 in connection with the expert network investigations. While Level Global was itself not charged, it closed its doors in November. Likewise, FrontPoint Partners, once managing more than $1 billion in assets, lost most of its investors following charges against its portfolio manager, Chip Skowron. FrontPoint was not accused of any wrongdoing, but as a relief defendant agreed to pay a $33 million settlement to the SEC without any admission of guilt. Diamondback, also involved in the expert network cases, is reported to have lost over $1 billion dollars in redemptions, well before criminal charges were filed against an individual from Diamondback in mid-January 2012. In January, Diamondback also agreed to pay $9 million to settle insider trading charges brought by the SEC and agreed to cooperate in the civil and criminal cases against its former employees. According to one source, the insider trading scandals have ended up costing Diamondback, FrontPoint and Level Global a combined $9 billion.[59] The demise of these hedge funds underscore that the mere association with insider trading investigations may be sufficient to cause irreparable damage to a business.

The January 2012 arrests of the seven high-level executives at "some of the largest and most sophisticated hedge funds in the country"[60] underscores the government's focus in curbing what it sees as "rampant" and "routine" illegal behavior at hedge funds. The government alleges that the seven men were part of a massive insider trading scheme that netted $78 million in illicit profits. The government alleges that, of the $78 million, more than $60 million was made on trades in a single stock (Dell Corporation) from 2008 through 2009. As U.S. Attorney Bharara explained, the trades were "an enormous bet [that] wasn't much of a gamble because the game was rigged."[61] The profits alleged to have been made by this new insider trading ring are only $2 million less than the profits Rajaratnam allegedly reaped on dozens of trades over a multi-year period. Commenting on the arrests, SEC Enforcement Director Khuzami noted that hedge funds, while legitimate businesses, are nevertheless characterized by a lack of transparency that can pose a "grave threat to the integrity of the markets and the level playing field that is the foundation of the markets."[62]

2. ATTORNEYS AS DEFENDANTS

Featured prominently in 2011 enforcement actions were a number of attorneys who were charged with misappropriating material nonpublic information about their clients and then selling the information.

Matthew Kluger, a former associate at several prominent law firms, was charged with passing information on pending corporate mergers involving his law firms' corporate clients to co-conspirators Kenneth Robinson and Garrett Bauer. Among the mergers were Hewlett-Packard's acquisition of 3Com, Adobe Systems' acquisition of Omniture, and Oracle's purchase of Sun Microsystems.

Kluger has pleaded guilty to the scheme that netted the three defendants $32 million in illicit profits. According to the government, the three defendants made so much money that, at one point, they discussed burning $175,000 in cash to avoid fingerprint detection by law enforcement.[63]

Part of the Galleon web involved three attorneys—two of whom entered guilty pleas in 2011 (the third had pleaded guilty in 2009). Related to the *Zvi Goffer* case, personal injury attorney Jason Goldfarb admitted that he passed information to Goffer that he had received from his college roommate, Arthur Cutillo, and his colleague, Brien Santarlas, both attorneys at Ropes & Gray. During Goffer's trial, Santarlas testified: "Merger agreements, loan documents, signature pages, those sort of documents are the sort of things we would pass along to [Goldfarb.]"[64] Santarlas detailed a conspiracy to betray law firm secrets for money that included secret meetings, trolling office printers, disposable cell phones and "snooping" around the office. When asked why he engaged in the scheme, Santarlas gave the lame excuse, "While we were making good money, it seemed like nothing compared to the money on Wall Street."[65]

In March 2011, the SEC also charged Todd Treadway, a former associate at Dewey & LeBoeuf, of insider trading in advance of two separate tender offer announcements by Dewey's clients.[66] In connection with one of the deals, the Financial Industry Regulatory Authority ("FINRA") began an inquiry into suspicious trading patterns. As part of the investigation, FINRA asked Dewey attorneys if they knew anyone from a list of persons that had traded the company's stock. Treadway denied knowing anyone, although his fiancée appeared on the list because Treadway had used an account in her name to execute some of the trades. The SEC alleges Treadway realized profits of approximately $30,000. On January 20, 2012, the parties filed

a settlement agreement whereby, without admitting or denying the allegations, Treadway agreed to disgorge the full amount of the illicit profits and pay a $10,000 civil penalty.[67]

3. MARK CUBAN – COMING SOON TO A THEATER NEAR YOU

In our 2010 Year End Review, we summarized the Fifth Circuit's reversal of the district court's dismissal of the SEC's case against Mark Cuban, which arose from Cuban's purchase of 600,000 shares of Mamma.com stock in March 2004 and his sale of those shares in June 2004. The Fifth Circuit remanded Cuban's case to the U.S. District Court for the Northern District of Texas, and Cuban—the billionaire owner of an NBA championship team and one of the few individual defendants with the means and the mettle to go toe-to-toe with the SEC—spent 2011 playing defense and offense with the SEC.

Cuban answered the SEC's complaint, denying that he had violated any securities laws and asserting several affirmative defenses. Cuban also claimed that the SEC's action was barred by the doctrine of unclean hands. Specifically, Cuban contended that the SEC and its agents prejudiced him by engaging in egregious acts of misconduct during the SEC's investigation. Cuban alleged that the SEC staff had conducted the investigation in an unfair, biased, and improper manner designed to prevent him from successfully persuading the SEC not to bring an enforcement action and from mounting an effective defense once the action was brought. Cuban relied on three principal grounds in support of his unclean hands defense: (1) that SEC staff had been committed to bringing the enforcement action regardless of what their investigation actually revealed; (2) that SEC staff deliberately undermined and abused the "Wells process," under which Cuban was supposed to have been given a fair opportunity to persuade the SEC not to bring an action against him; and (3) that SEC staff engaged in acts of investigative and litigation misconduct.[68]

Although the court acknowledged that the affirmative defense of unclean hands could be brought against the SEC "in strictly limited circumstances," it held that Cuban had "failed to allege facts that give the SEC fair notice that the misconduct on which he relies resulted in prejudice to his defense of the enforcement action that rises to a constitutional level and is established through a direct nexus between the misconduct and the constitutional injury." This defect was "fatal to his unclean hands defense."[69]

Even though Cuban's defense was dismissed, the SEC independently conducted an internal investigation and, through its Inspector General, H. David Kotz, cleared itself of any wrongdoing in a 96-page report issued on August 22, 2011.[70] Ultimately, the narrow limits on the unclean hands defense imposed by the court, as well as the self-policing nature of the SEC, make it unlikely that any defendant will successfully challenge a case through allegations of unclean hands.

Losing this fight, Cuban has continued to challenge the underlying case through a contentious discovery process. 2012 promises additional drama in the Cuban saga, perhaps including a movie of his ordeal with the SEC that Cuban has said he will produce.

D. SENTENCING'S BIG YEAR

Record-breaking criminal and civil penalties were handed out to insider trading defendants in 2011. On the criminal side, federal courts sentenced a record number of insider trading defendants and sentenced a higher proportion to prison than in any prior year. The large majority of sentences, however, remained below the Sentencing Guidelines (the "Guidelines") range and below the recommendations of prosecutors. On the civil side, the SEC settled or secured judgment in almost twice the number of insider trading cases it had brought to final judgment the year before. The tables at Appendix A summarize criminal and civil penalties imposed in insider trading cases in 2011.

1. CRIMINAL PENALTIES

In 2011, the U.S. Attorney's Office for the Southern District of New York, which continues to indict and try the bulk of the nation's insider trading cases, had a perfect record in insider trading trials. No defendant who went to trial won an acquittal. In May, the government won the biggest insider trading trial in a generation, resulting in a guilty verdict against Raj Rajaratnam. A month later, the government won a guilty verdict against expert network consultant Winifred Jiau in a case where she was charged, tried, and convicted in less than eight months. At least 38 insider trading defendants were sentenced in 2011. This is more than four times the number of total sentences handed out in 2010, and does not include many of the cooperating witnesses who have entered guilty pleas in both the *Galleon* and expert network cases and still await sentencing.

Of the 38 insider trading sentences in 2011, 28 defendants, or 74%, were sentenced to prison. Few defendants, however, received sentences in the range recommended by the Guidelines. Indeed, all but one defendant received sentences below or at the very bottom of the range called for under the Guidelines. No defendant received a sentence above the Guidelines range. Federal judges sentencing insider traders continue to send the clear, consistent message that the Guidelines for insider trading offenses are unreasonably harsh and do not necessarily provide an appropriate basis for rendering fair sentences in insider trading cases. In sentencing Jiau to 48 months in prison—when she faced between 97 and 121 months—Judge Rakoff noted, "There's no way I'm going to impose a guidelines sentence in this case…. The guidelines give the mirage of something that can be obtained with arithmetic certainty."[71]

Despite this trend, in February 2011, U.S. Attorney Bharara testified before the U.S. Sentencing Commission and urged tougher Guidelines sentences for insider trading. He told the Commission that "[t]he guidelines as they stand may be letting some defendants in some cases off with lighter sentences than they deserve,"[72] because the Base Offense Level is based largely on the amount of profit realized or loss avoided by insider trading. Mr. Bharara called for a higher sentencing range for defendants involved in complex insider trading schemes regardless of whether the trading yields profits. Commission member and judge Beryl Howell of the U.S. District Court for the District of Columbia noted her "disappoint[ment]" that Mr. Bharara's testimony did not provide more specific details demonstrating the Justice Department's "willingness to do the hard work" of updating the Guidelines for insider trading.[73]

On January 19, 2012, the U.S. Sentencing Commission proposed amending the Guidelines to account for cases where an insider trader, while engaging in illegal conduct, does not necessarily realize high gains due to market forces or other factors. Specifically, the Commission proposed a two-level enhancement for sophisticated insider trading offenders and a four-level enhancement for sophisticated insider traders who hold a position of trust, such as an officer or director of a publicly traded company, a registered broker or dealer, an investment adviser, a commodities trading adviser or a commodity pool operator. The proposal defines "sophisticated insider trading" as "especially complex or intricate conduct pertaining to the execution or concealment of the offense." Comments regarding the proposed amendment are due March 19, 2012.

In light of Mr. Bharara's testimony, it is no surprise that in 2011, prosecutors in his office continued to argue for increasingly harsh sentences for insider traders. As noted, the sentences in 2011 were more numerous and harsher than in prior years, although for the most part remained below what the government was seeking. The sentences in the high profile cases fit this pattern. In September, for example, Zvi Goffer was convicted at trial for his role in a tangent of the Galleon insider trading scheme. He received a 10-year sentence, which is among the longest insider trading sentences ever. At the sentencing hearing, Judge Sullivan indicated that Goffer's sentence "will be used to send a message to Wall Street [that] [t]hese crimes are not going to be tolerated."[74] Ten years is a long time, but Goffer's sentence was still *below* the 121 to 151-month range called for under the Guidelines. A day later, Rajaratnam received an 11-year sentence, *the* longest insider trading sentence in U.S. history. In sentencing Rajaratnam, Judge Holwell explained that Rajaratnam's crimes "reflect a virus in our business culture that needs to be eradicated."[75] Rajaratnam's sentence, however, was well below the 235 to 293-month range called for under the Guidelines.

Both Goffer and Rajaratnam were sentenced after losing at trial. In all criminal cases—not just insider trading cases—defendants who exercise their constitutional right to take their cases to trial often receive longer sentences than those who plead guilty or choose to cooperate. Before sentencing him to 10 years in prison, Judge Sullivan told Goffer, "You decided to gamble with your future . . . and you lost."[76] But even though Rajaratnam and Goffer both went to trial, and even though the sentencing judges in both cases stated that they were sending a message about the crime of insider trading, both defendants received sentences below the Guidelines range.

2. COOPERATION RESULTS IN LENIENT SENTENCES

One fact of sentencing insider traders has remained constant over the years: the most important factor in determining the severity of a sentence is whether the defendant cooperated with the government's investigation of other persons. 2011 was no exception.

Of the six cooperators in insider trading cases sentenced last year, three received sentences of probation,[77] one was sentenced to six months imprisonment (when he faced between 30 and 37 months),[78] one was sentenced to 60 months imprisonment (when he faced between 210 and 262 months),[79] and the last one was sentenced to time served of 24 days.[80]

In July, Donna Murdoch—whom prosecutors called a "model cooperating witness"[81]—for example, received two years of probation after testifying for four days at the trial of co-conspirator and ex-lover James Gansman, who had been convicted at trial and received a sentence of one year and one day. In November, David Plate, a former trader with the Shottenfeld Group LLC and key witness in the *Goffer* trial, similarly received three years of probation for his role in the Galleon insider trading scheme. Leading up to Plate's sentencing, the U.S. Attorney's Office for the Southern District of New York told the court that Plate's cooperation provided "substantial assistance [to the government] in the investigation and prosecution of his [co-defendants.]"[82] Likewise, the French doctor Yves Benhamou, whose cooperation the government lauded as having played a "critical role"[83] in the prosecution of Chip Skowron, received time already served. By stark contrast, Skowron was sentenced to five years in prison.

While cooperation does not guarantee that a defendant will avoid prison, it will almost certainly result in a sentence well below the Guidelines. Brien Santarlas, for example, the former lawyer at Ropes & Gray LLP who sold information about proposed mergers to members of an insider trading ring, was sentenced to six months in November when he faced between 30 and 37 months. Judge Sullivan noted that he would have sent Santarlas to prison for three years had Santarlas not cooperated. In its sentencing submission, the government noted that "Santarlas's immediate agreement to cooperate and to record a meeting with [Arthur Cutillo, another former Ropes & Gray lawyer,] had a truly dramatic impact on the Government's investigation."[84]

In the first weeks of 2012, the government reiterated its position that cooperators should receive lenient sentences. In *United States v. Slaine,* prosecutors submitted a Sentencing Memorandum urging Judge Sullivan to give the defendant a sentence well below the Guidelines range.[85] The government urged the sentencing court to go easy, because "Slaine's cooperation has been nothing short of extraordinary."[86] As part of his plea agreement, Slaine had agreed to wear a wire and record numerous conversations. Prosecutors credited Slaine with the successful investigation and prosecution of Zvi Goffer, Emanuel Goffer, Michael Kimelman, Arthur Cutillo, Brien Santarlas, Gautham Shankar, Franz Tudor, David Plate, Thomas Hardin, and Michael Cardillo. In addition, the government credited the evidence gathered by Slaine with playing a major role in the successful prosecution of Rajaratnam and the expert network defendants. According to the government, "perhaps the greatest impact of Slaine's cooperation is the fact that his assistance was the launching point for many successful and ongoing criminal investigations of multiple insider trading networks."[87]

For the crimes he had committed, Slaine faced maximum exposure of 25 years in prison. On January 20, 2012, Judge Sullivan sentenced Slaine to three years of probation—not a day behind bars. "Mr. Slaine, you have your life back," Judge Sullivan said at the end of the sentencing hearing. Judge Sullivan added, "I think you've earned it, by virtue of the work you've done over the last five years."[88]

3. CIVIL PENALTIES

The relief sought by the SEC in insider trading cases continues to include injunctive relief enjoining defendants from future violations, disgorgement of illegal profits (or losses avoided), prejudgment interest, civil penalties of up to three times the profit or avoided loss, and individual bars from acting as officers or directors of publicly traded companies. The SEC will also sometimes bring an administrative action to bar defendants from associating with entities regulated by the SEC, such as broker-dealers, investment advisors, and transfer agents.

Whether the government will pursue only civil penalties, or both civil and criminal penalties, is a matter of prosecutorial discretion. Factors considered may include whether the tipper of material nonpublic information violated a duty of trust to the company and its shareholders, whether the tippee was a market or other professional, the amount of money made or losses avoided, and how strong a case the government has against a potential defendant. The lower burden of proof that the SEC must carry in a civil case—preponderance of the evidence—will often warrant a case even where the criminal burden of proof—proof beyond a reasonable doubt—cannot

be met. The SEC thus files more cases than does the DOJ. Indeed, in its effort to aggressively pursue insider trading, it is not uncommon for the SEC to bring cases based on little more than suspicious trading, often against "one or more unknown purchasers" and accompanied by a freeze order.

In 2011, the number of insider trading settlements completed by the SEC made clear that insider trading continues to be a key enforcement priority. The SEC secured judgment or settlement of more than 100 insider trading cases. And as discussed before, among the judgments secured by the SEC in 2011 was a record financial penalty of $92.8 million against Rajaratnam.

LEGISLATIVE REFORM

A. PROCEDURAL CHANGES UNDER DODD-FRANK

One of the major legislative developments in 2010 was the enactment of the Dodd-Frank Wall Street Reform Act (the "Act").[89] The Act was broadly intended to reform the financial regulatory system in response to the global financial crisis. Included among the reforms were a number of provisions that enhance the SEC's ability to enforce insider trading laws and the securities laws more generally. On May 25, 2011, the SEC adopted the final rules implementing Dodd-Frank.

In our 2010 Year End Review we discussed Dodd-Frank's provision giving the SEC authority to pay financial rewards to whistleblowers who provide new and timely information about any securities law violation, including insider trading. Among other things, to be eligible, the whistleblower's information must lead to a successful enforcement action with more than $1 million in monetary sanctions. Under the Act, whistleblowers are entitled to an award ranging from 10% to 30% of the monetary sanctions collected in the SEC action and in any "related" judicial or administrative actions, which include criminal prosecutions brought by the DOJ, or state attorney general, or an action brought by an appropriate regulatory authority or a self-regulatory organization. The SEC officially launched the whistleblower program on August 12, 2011.[90] Given the infancy of the program, it is too early to see any results or to tell what impact—if any—it will have on enforcement of insider trading.

A lesser known provision of Dodd-Frank, however, started to show its potential effects on insider trading enforcement in 2011. Deep within Dodd-Frank, Congress quietly changed certain rules for SEC enforcement.[91] Under § 929P, the SEC now has the broad power to impose civil monetary penalties in administrative proceedings in which the SEC seeks a cease and desist order.[92] The SEC can now bring administrative proceedings against entities and individuals even if they are not SEC registrants.[93]

Administrative proceedings can be advantageous to the SEC given their rapid and inexpensive nature as compared to cases in federal district court—the traditional forum for an SEC enforcement action seeking penalties. Administrative proceedings are presided over by an administrative law judge rather than a district court judge, and the respondent does not have the right to have the case heard by a jury. Under SEC regulations, an administrative proceeding must move at an expedited pace with proceedings having to be concluded within 120, 210 or 300 days from the day the proceeding was initiated.[94] Discovery is also limited in an administrative proceeding, with depositions almost never allowed. The curtailed discovery favors the SEC, which—regardless of the discovery rules—still has broad investigative powers not available to a civil respondent. Administrative proceedings may also benefit the SEC because the Commission has *de novo* review power to override the administrative law judge's factual findings.

In 2011, the SEC was unsuccessful in bringing its first administrative case in an insider trading matter. On March 1, 2011, the SEC instituted an administrative cease-and-desist proceeding against Rajat Gupta. Specifically, the SEC alleged that Gupta had disclosed material nonpublic information he obtained in the course of his duties as a board member at Goldman Sachs and Procter & Gamble to Raj Rajaratnam and that Rajaratnam had used that inside information to trade.[95]

Gupta filed a complaint in March 2011 in federal district court against the SEC seeking declaratory judgment and injunctive relief to bar the administrative proceeding on the grounds that the SEC chose to bring an administrative proceeding "for the bad faith purpose of shoring up a meritless case by disarming its adversary."[96] Denying the SEC's motion to dismiss Gupta's action, Judge Rakoff held that Gupta could argue that the SEC violated his equal protection rights by singling him out from other defendants the SEC had sued in related *Galleon* actions. Judge Rakoff found that the administrative proceeding was

a "seeming exercise in forum-shopping."[97] As Judge Rakoff explained: "[W]e have the unusual case where there is already a well-developed public record of Gupta being treated substantially disparately from 28 essentially identical defendants, with not even a hint from the SEC . . . as to why this should be so."[98]

By August 2011, the parties reached a settlement. The SEC agreed to dismiss the administrative proceeding, and Gupta agreed to dismiss his suit against the SEC. The parties further agreed that any future SEC enforcement action against Gupta based on the same allegations in the administrative proceeding would be filed only in federal court in the Southern District of New York. While the dismissal of the administrative proceeding appeared to be a victory for Gupta, the victory was short-lived. On October 26, 2011, Gupta was indicted, and the SEC filed a parallel civil case against Gupta (and Rajaratnam) in federal court.[99] The SEC case is scheduled to go to trial in October of this year. Even though, in a narrow sense, Gupta got what he sought—a federal civil case in which he could take discovery—the parallel criminal case in effect limits Gupta's ability to conduct discovery. Typically, discovery in an SEC case is stayed pending resolution of a parallel criminal case. Judge Rakoff, however, has permitted Gupta in his SEC civil action to take the deposition of seven witnesses, including Goldman Sachs Chief Executive Officer Lloyd Blankfein, before the April 9 criminal trial. In his ruling, Judge Rakoff noted that these seven individuals were not witnesses the government has indicated it would call in the criminal case, and therefore, "the Court sees no material argument whatsoever for delaying the depositions."[100] But Judge Rakoff did order that the deposition of certain other Goldman Sachs officers who are likely to be witnesses in the criminal case must wait until after the criminal trial.

About two months after bringing the administrative proceeding against Gupta, the SEC successfully brought an administrative proceeding and secured a judgment against a portfolio manager who was alleged to have tipped family members to redeem shares in funds he managed.[101]

In September 2011, the SEC brought its third administrative insider trading enforcement action of the year. The SEC filed a complaint against Spencer Mindlin and his father, Alfred Mindlin, alleging that, while Spencer Mindlin worked on the exchange-traded fund (ETF)[102] trading desk at a financial institution, he and his father bought and sold securities underlying a specific ETF based on the financial institution's plans to buy and sell the same underlying securities.[103] The SEC gave no indication why it chose this particular case as its next attempt at bringing an administrative insider trading case after its well-publicized debacle with Gupta. It may well be because the case—the first insider trading case involving an ETF—presents clear challenges. Depending on the size of the ETF and the market float of the individual stocks bought by the ETF, the SEC may have difficulty proving that knowing that an ETF will buy a particular stock is material information concerning that stock. The administrative forum may give the SEC enough of an advantage to overcome the challenges it faces.

With a track record of only three cases, it is too early to assess or predict how the SEC will use the administrative powers it was granted in 2011 with regards to insider trading enforcement. Nonetheless, it is likely that by next year's Year End Review, we will have to include the number of administrative proceedings (and size of penalties collected) as part of our tally.

B. CONGRESSIONAL REFORM

Trading by members of Congress attracted a great amount of attention in 2011, 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 at Capitol Hill.[104]

"Insiders" focused on pending bill H.R. 1148, the "Stop Trading on Congressional Knowledge Act" (the "Stock Act"), which was first introduced in 2006. If enacted, the Stock Act would, in part, make it illegal for members of Congress and staff to buy or sell securities based on certain nonpublic information, and would require members and their staffers to report securities trades of more than $1,000 within 90 days. After *60 Minutes* called attention to trading by members of Congress, the Stock Act, which had languished with only nine sponsors, all of a sudden had more than 140 sponsors.[105]

While members of Congress have undoubtedly traded on information learned in the course of their congressional duties without legal repercussions,[106] the legality of this practice under the securities laws is somewhat murky. Testifying before Congress on the Stock Act on December 26, 2011, SEC Enforcement Director Khuzami explained that "[t]here is no reason why trading by Members of Congress or their staff members

would be considered 'exempt' from the federal securities laws, including the insider trading prohibitions, though the application of these principles to such trading, particularly in the case of Members of Congress, is without direct precedent and may present some unique issues."[107] Mr. Khuzami pointed out:

> [T]here are several fact-intensive questions – including the existence and nature of the duty being breached and both the materiality and nonpublic nature of the information – that would drive the analysis [of whether illegal insider trading had occurred.][108]

Mr. Khuzami explained that, in bringing an insider trading case against a member of Congress, the SEC would have to show that the lawmaker violated a fiduciary duty or a duty of trust in trading on confidential information learned in his or her official capacity. But, according to Mr. Khuzami, it is unclear if such activity "violates the fiduciary duty he or she owes to the United States and its citizens, or to the Federal Government as his or her employer."[109]

If the Stock Act were to be passed, however, at least some critics speculate that it may actually increase rather than curb insider trading by lawmakers. The current version of the Stock Act applies only to trades related to *pending* legislation. By making the "rules of the game [] clearer" only with respect to a narrow aspect of the lawmakers' job, commentators fear insider trading outside of the Stock Act will be seen as approved conduct.

In addition, as the insider trading rules allow the SEC wide discretion in the definition of insider trading, as well as in the enforcement of those laws, it is unclear how a clear statement in the congressional realm might affect the SEC's enforcement of insider trading outside of this limited sphere. Khuzami thus cautioned that "[a]ny statutory changes in this area should be carefully calibrated to ensure that they do not narrow current law and thereby make it more difficult to bring future insider trading actions against individuals outside of Congress."[110]

PRIVATE LITIGATION

In addition to government enforcement, companies and individuals that engage in insider trading also face exposure to private civil actions. While an analysis of private securities litigation arising from insider trading activity in 2011 is beyond the scope of this Review, the Delaware Supreme Court's decision in *Kahn v. Kolberg Kravis Roberts & Co., L.P.,* which opened the door for derivative suits in insider trading cases, merits mention.[111]

Kahn made clear that a plaintiff may state a derivative claim for insider trading without a showing of actual harm to the corporation, and expressly declined to limit the disgorgement remedy to cases where the insider usurped a corporate opportunity or competed directly with the corporation. While its effects have yet to be seen, this clarification of Delaware law on these issues may well alter the landscape of private litigation arising from insider trading.

The insider trading derivative claims in *Kahn* were brought by two shareholders of Primedia, Inc. who alleged, among other claims, that Primedia's majority shareholder, Kolberg Kravis Roberts & Co., breached its fiduciary duties to Primedia by purchasing preferred stock at a time when it possessed material nonpublic information. Primedia appointed a special litigation committee to investigate and review the claims, and issued a 347-page report which concluded that it was not in Primedia's best interest to pursue the claims.

The Court of Chancery granted the defendant's motion to dismiss. Applying the two-part test from the Delaware Supreme Court's decision in *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), the Chancery Court first examined and approved of the integrity of the special litigation committee's investigation and conclusions. Under the second, discretionary prong of the test, the Court applied its own business judgment to determine whether the company should pursue a claim that "may be sustainable" when its special litigation committee decides against pursuing that claim, and granted the motion to dismiss because disgorgement was not a remedy available to the plaintiffs.

The Delaware Supreme Court agreed with the Chancery Court's finding that dismissal was appropriate because there was no genuine issue of material fact about the independence, good faith, or reasonableness of the special litigation committee, its investigation, or its conclusions. However, the Delaware Supreme Court reversed and remanded based on *Zapata's* second prong, holding that "actual harm to the corporation is not required" for a plaintiff to state a claim based on insider trading, and that, because "it is inequitable to permit the fiduciary to profit from using confidential corporate information…equity requires disgorgement of that profit" even if the corporation did not suffer actual harm.[112]

Following *Kahn*, future plaintiffs will likely look to derivative actions as a means of pursuing insider trading claims including money damages. Nothing in *Kahn* changed or relaxed the technical requirements for bringing a derivative action, but it did give plaintiffs a new avenue to bypass the more stringent requirements for direct actions under the federal securities laws, including the heightened standard for pleading scienter under the Private Securities Litigation Reform Act of 1995.[113] 2011 introduced the possibility for shareholder plaintiffs to rely on derivative lawsuits in insider trading cases. It remains to be seen to what extent plaintiffs will do so and how the contours for this relatively unexplored area of law will be defined.

CONCLUSION

As has been the trend for the last couple of years, 2011 was a big year for insider trading cases. The government continued to make insider trading a top enforcement priority and has given every indication that it will continue to do so in the future. As Mr. Bharara indicated in a piece in *The New Yorker* about the *Galleon* trial, insider trading is "everywhere you look."[114]

1. *Chiarella v. United States*, 445 U.S. 222 (1980).
2. *United States v. O'Hagan*, 521 U.S. 642 (1997).
3. 17 C.F.R. § 240.14e-3.
4. 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)).
5. 15 U.S.C. § 78u-1.
6. *Statement on the Application of Insider Trading Law to Trading by Members of Congress and Their Staffs: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 112th Cong. (2011) (statement of Robert Khuzami, Dir., Div. of Enforcement, SEC), *available at* http://www.sec.gov/news/testimony/2011/ts120111rsk.htm.
7. 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.
8. *Id.*
9. *Id.*
10. In addition to Rajaratnam, the following individuals and entities have been charged by the DOJ and/or the SEC in connection with the *Galleon* web: Steven Fortuna, Roomy Khan, David Slaine, Ali Far, Richard Choo-Beng Lee, Gautham Shankar, Franz Tudor, Thomas Hardin, Brien Santarlas, Danielle Chiesi, Mark Kurland, Rajiv Goel, Robert Moffat, Anil Kumar, David Plate, Deep Shah, Ali Hariri, Zvi Goffer, Craig Drimal, Michael Kimelman, Arthur Cutillo, Jason Goldfarb, Emanuel Goffer, Adam Smith, Michael Cardillo, Shammara Hussain, Sunil Bhalla, Robert Feinblatt, Jeffrey Yokuty, Rajat Gupta, Galleon Management LP, S2 Capital Management, Newcastle Funds LLC, Spherix Capital LLC, Schottenfeld Group, and Trivium Capital Management LLC.
11. David Glovin et al., "Rajaratnam 'Corrupted' Friends, Employees, Prosecutor Says," Bloomberg, Apr. 20, 2011, *available at* http://www.bloomberg.com/news/2011-04-20/rajaratnam-corrupted-friends-employees-prosecutor-tells-insider-jury.html.
12. Peter Lattman, "Prosecution Rests Its Case in Galleon Trial," N.Y. Times DealBook, Apr. 6, 2011, *available at* http://dealbook.nytimes.com/2011/04/06/prosecution-rests-its-case-in-the-galleon-trial/.
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[Information current as of January 30, 2012]

Appendix A

2011: Penalties Imposed in Insider Trading Prosecutions and SEC Enforcement Actions

CRIMINAL PROSECUTIONS

Date	Defendant	Role	Trial or Plea	Sentence
1/28/2011	Yonni Sebbag (*United States v. Hoxie, et al.*, S.D.N.Y. 2010)	Tippee	Plea	• 27 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 18 (27-33 months): +7 base level +14 gain -3 acceptance of responsibility • $200 special assessment • $15,000 forfeiture
2/22/2011	Bonnie Hoxie (*United States v. Hoxie, et al.*, S.D.N.Y. 2010)	Tipper	Plea	• 3 years supervised release (including 4 months home confinement) • Guidelines Calculation: Offense level 9 (4-10 months): +7 base level +4 gain -2 acceptance of responsibility • $200 special assessment • 300 hours of community service
3/22/2011	Igor Poteroba (*United States v. Poteroba*, S.D.N.Y. 2010)	Tipper	Plea	• 22 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 19 (30-37 months): +8 base level +12 gain +2 abuse of trust -3 acceptance of responsibility • $400 special assessment • $25,000 fine • $465,095 forfeiture

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CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
4/5/2011	Rex Shelby (*United States v. Shelby*, S.D. Tex. 2003)	Tippee	Plea	• 2 years supervised release (including 3 months in a halfway house and 3 months home confinement) • Plea agreement: sentence within the range of 6-12 months of community confinement, home confinement, or some combination thereof would appropriately dispose of the case • $100 special assessment • $2,568,750 forfeiture • 230 hours of community service
5/13/2011	Richard Hansen (*United States v. Hansen, et al.*, S.D.N.Y. 2010)	Tippee/Tipper	Plea	• 3 months imprisonment plus 2 years supervised release (including 5 months home confinement) • Guidelines Calculation: Offense level 12 (10-16 months)* • $200 special assessment • $59,631 forfeiture
5/24/2011	Alexi Koval (*United States v. Koval*, S.D.N.Y. 2010)	Tippee	Plea	• 26 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 19 (30-37 months): +8 base level +14 gain -3 acceptance of responsibility • $400 special assessment • $1,414,290 forfeiture

* Precise calculation unknown; it was publicly reported that Hansen faced up to 16 months in prison under the Guidelines.

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CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
6/30/2011	Arthur Cutillo (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tipper	Plea	• 30 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 19 (30-37 months): +8 base level +12 gain +2 abuse of trust -3 acceptance of responsibility • $200 special assessment • $378,608 forfeiture
7/20/2011	Danielle Chiesi (*United States v. Chiesi*, S.D.N.Y. 2009)	Tippee/Tipper	Plea	• 30 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 21 (37-46 months): +8 base level +16 gain -3 acceptance of responsibility • $300 special assessment • $25,000 fine • 250 hours of community service • Mandatory mental health and alcohol treatment
7/22/2011	Barry Minkow (*United States v. Minkow*, S.D. Fla. 2011)	Tippee	Plea	• 60 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 37 (210-262 months): +6 base level +30 gain +2 sophisticated means +2 abuse of trust -3 acceptance of responsibility • $100 special assessment • $583,573,600 restitution

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
7/27/2011	Donna Murdoch (*United States v. Gansman*, S.D.N.Y. 2008)	Tippee/Tipper	Plea	• 2 years supervised release (including 6 months home confinement) • Guidelines Calculation: Offense level 21 (37-46 months)* • $1,700 special assessment • $392,035 forfeiture • 300 hours of community service
7/29/2011	Donald Longueuil (*United States v. Jiau, et al.*, S.D.N.Y. 2011)	Tippee	Plea	• 30 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 23 (46-57 months)** • $200 special assessment • $1,251,685 forfeiture
8/12/2011	Donald Johnson (*United States v. Johnson*, E.D. Va. 2011)	Tippee	Plea	• 42 months imprisonment plus 1 year supervised release • Guidelines Calculation: Offense level 21 (37-46 months): +8 base level +14 gain +2 abuse of trust -3 acceptance of responsibility • $100 special assessment • $755,066 forfeiture
8/19/2011	Jason Goldfarb (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tippee/Tipper	Plea	• 36 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 21 (37-46 months): +8 base level +16 gain -3 acceptance of responsibility • $200 special assessment • $1,103,131 forfeiture • $32,500 fine

* Precise calculation unknown; it was publicly reported that Murdoch faced nearly 4 years in prison under the Guidelines.
** Precise calculation unknown; it was publicly reported that Longueuil faced between 46 and 57 months in prison under the Guidelines.

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
8/29/2011	Gary Lawson (*United States v. Lawson*, W.D. Va. 2011)	Tipper	Plea	• 24 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 22 (41-51 months)* • $200 special assessment • $210,420 forfeiture (jointly and severally with Hart) • $7,500 fine
8/29/2011	Kenneth Hart (*United States v. Hart*, W.D. Va. 2010)	Tipper	Plea	• 24 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 22 (41-51 months)** • $200 special assessment • $210,420 forfeiture (jointly and severally with Lawson) • $7,500 fine
8/31/2011	Craig Drimal (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tippee	Plea	• 66 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 27 (70-87 months): +8 base level +20 gain +2 obstruction -3 acceptance of responsibility • $600 special assessment • $11,000,000 forfeiture
9/7/2011	Don Ching Trang Chu (*United States v. Chu*, S.D.N.Y. 2011)	Tippee/Tipper	Plea	• 2 years supervised release • Guidelines Calculation: Offense level 6 (0-6 months): +8 base level -2 acceptance of responsibility • $200 special assessment • $2,500 fine

* Precise calculation unknown; it was publicly reported that Lawson faced between 41 and 51 months in prison under the Guidelines.
** Precise calculation unknown; it was publicly reported that Hart faced between 41 and 51 months in prison under the Guidelines.

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
9/12/2011	Aaron Scalia (*United States v. Scalia*, S.D. Cal. 2011)	Tipper	Plea	• 3 years supervised release (including 4 months in a halfway house) • Guidelines Calculation not publicly reported • $100 special assessment • $185,420 forfeiture (jointly and severally with Stephen Scalia) • 250 hours of community service
9/12/2011	Stephen Scalia (*United States v. Scalia*, S.D. Cal. 2011)	Tippee/Tipper	Plea	• 3 years supervised release (including 4 months in a halfway house) • Guidelines Calculation not publicly reported • $100 special assessment • $185,420 forfeiture (jointly and severally with Aaron Scalia) • $3,000 fine
9/15/2011	Manosha Karunatilaka (*United States v. Karunatilaka*, S.D.N.Y. 2011)	Tipper	Plea	• 18 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 21 (37-46 months)* • $35,000 forfeiture • $100 special assessment
9/21/2011	Winifred Jiau (*United States v. Jiau*, S.D.N.Y. 2011)	Tipper	Trial	• 48 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 30 (97-121 months): +8 base level +18 gain +2 abuse of trust +2 obstruction • $200 special assessment • $3,118,158 forfeiture

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

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
9/22/2011	Zvi Goffer (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tippee/Tipper	Trial	• 120 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 32 (121-151 months)* • $1,400 special assessment • $10,022,931 forfeiture
10/7/2011	Emanuel Goffer (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tippee	Trial	• 36 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 24 (51-63 months)** • $300 special assessment • $761,623 forfeiture
10/7/2011	Zishen Fan (*United States v. Fan*, W.D. Wash. 2011)	Tippee	Plea	• 18 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 19 (30-37 months): +8 base level +12 gain +2 obstruction -3 acceptance of responsibility • $100 special assessment
10/11/2011	H. Clayton Peterson (*United States v. Peterson*, S.D.N.Y. 2011)	Tipper	Plea	• 2 years supervised release (including 3 months home confinement) • Guidelines Calculation: Offense level 13 (12-18 months): +8 base level +6 gain +2 abuse of trust -3 acceptance of responsibility • $200 special assessment • $63,000 forfeiture • $400,000 fine

* Precise calculation unknown; it was publicly reported that Goffer faced between 121 and 151 months in prison under the Guidelines.
** Precise calculation unknown; it was publicly reported that Goffer faced between 51 and 63 months in prison under the Guidelines.

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
10/12/2011	Michael Kimelman (*United States v. Goffer, et al.*, S.D.N.Y. 2010)	Tippee	Trial	• 30 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 20 (33-41 months)* • $300 special assessment • $289,079 forfeiture
10/13/2011	Raj Rajaratnam (*United States v. Rajaratnam*, S.D.N.Y. 2009)	Tippee/Tipper	Trial	• 132 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 38 (235-293 months): +8 base level +24 gain +4 organizer/leader of extensive criminal activity +2 obstruction • $1,400 special assessment • $53,816,434 forfeiture • $10,000,000 fine
11/2/2011	David Plate (*United States v. Goffer*, S.D.N.Y. 2010)	Tippee	Plea	• 3 years supervised release (including 6 months home confinement) • Guidelines Calculation: Offense level 19 (30-37 months): +8 base level +14 gain** -3 acceptance of responsibility • $200 special assessment • $289,000 forfeiture
11/3/2011	Melissa Mahler (*United States v. Mahler*, D.D.C. 2009)	Tippee	Plea	• 2 years supervised release (including 100 hours of community service) • Guidelines Calculation: Offense level 4 (0-6 months): +6 base level -2 acceptance of responsibility • $100 special assessment • $2,500 fine

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

** During sentencing, Mr. Plate argued that the gain calculation should have resulted in a +10 enhancement making the offense level 15 (18-24 months).

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
11/8/2011	Annabel McClellan (*United States v. McClellan*, N.D. Cal. 2010)	Tipper	Plea	• 11 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 12 (10-16 months): +14 base level -2 acceptance of responsibility • $100 special assessment
11/16/2011	Joseph "Chip" Skowron III (*United States v. Skowron*, S.D.N.Y. 2011)	Tippee	Plea	• 60 months imprisonment plus 3 years supervised release • Guidelines Calculation: Offense level 29 (87 to 108 months):** +8 base level +22 gain +2 obstruction -3 acceptance of responsibility • $5,000,000 forfeiture • $100 special assessment • $150,000 fine
11/30/2011	Brien Santarlas (*United States v. Santarlas*, S.D.N.Y. 2009)	Tipper	Plea	• 6 months imprisonment (possibly at halfway house or home confinement) plus 2 years supervised release • Guidelines Calculation: Offense level 19 (30 to 37 months): +8 base level +12 gain +2 abuse of trust -3 acceptance of responsibility • $200 special assessment • $32,500 forfeiture
12/5/2011	David Myers (*United States v. Myers, et al.*, S.D. Cal. 2010)	Tippee	Plea	• Time served plus 3 years supervised release • Guidelines Calculation not publicly reported • $460,580 forfeiture • $100 special assessment • $1,000 fine

** In their sentencing memoranda, both parties agreed that a sentence of 60 months imprisonment (the statutory maximum for the single charge to which Skowron plead guilty) was "reasonable and applicable to Skowron's criminal conduct."

Appendix A

CRIMINAL PROSECUTIONS (cont'd)

Date	Defendant	Role	Trial or Plea	Sentence
12/5/2011	Brett Cohen (*United States v. Myers, et al.*, S.D. Cal. 2010)	Tippee/Tipper	Plea	• 3 years supervised release • Guidelines Calculation not publicly reported • $100 special assessment • $500 fine
12/9/2011	Jamil Bouchareb (*United States v. Bouchareb, et al.*, S.D.N.Y. 2009)	Tippee	Plea	• 30 months imprisonment plus 2 years supervised release • Guidelines Calculation not publicly reported • $1,500,000 forfeiture • $20,000 fine
12/9/2011	Daniel Corbin (*United States v. Bouchareb, et al.*, S.D.N.Y. 2009)	Tippee	Plea	• 6 months imprisonment plus 2 years supervised release • Guidelines Calculation not publicly reported • $1,000,000 forfeiture
12/21/2011	James Fleishman (*United States v. Nguyen, et al.*, S.D.N.Y. 2011)	Tipper	Trial	• 30 months imprisonment plus 2 years supervised release • Guidelines Calculation: Offense level 29 (87 to 108 months): +8 base level +18 gain +3 role enhancement • Forfeiture to be determined at a later date
12/21/2011	Yves Benhamou (*United States v. Benhamou*, S.D.N.Y. 2011)	Tipper	Plea	• Time served (24 days) plus 3 years supervised release • Guidelines Calculation: Offense level 31 (108 to 135 months)* • $400 special assessment • $52,138 forfeiture • $5,956,152 restitution

* Precise calculation unknown; it was publicly reported that Mr. Benhamou faced between 108 and 135 months in prison.

Appendix A

SEC ENFORCEMENT ACTIONS

Date	Defendant	Role	Trial or Settlement	Outcome
1/3/2011	Mitchell Sacks (*SEC v. Teo, et al.*, D.N.J. 2004)	Tippee	Settlement	• Permanent injunction • $115,155 disgorgement • $85,920 prejudgment interest • $115,155 civil penalty
1/11/2011	Philip Macdonald (*SEC v. Macdonald, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $810,000 disgorgement
1/13/2011	Robert McCullough, Jr. (*SEC v. CytoCore, Inc., et al.*, N.D. Ill. 2011)	Tippee	Settlement	• Permanent injunction • $100,000 civil penalty
1/14/2011	Joseph Radcliffe (*SEC v. Radcliffe, et al.*, D.D.C. 2011)	Tippee	Settlement	• Permanent injunction • $955,000 disgorgement • $299,541 prejudgment interest • $175,000 civil penalty
1/21/2011	Richard White (*SEC v. Scoppetuolo, et al.*, S.D. Fla. 2010)	Tippee	Settlement	• Permanent injunction • $2,828 disgorgement • $430 prejudgment interest • $8,484 civil penalty
1/24/2011	Joseph Nacchio (*SEC v. Nacchio*, D. Colo. 2005)	Tippee	Settlement	• Permanent injunction • $44,632,464 disgorgement plus prejudgment interest • Officer/director bar
1/25/2011	Peter Kohler (*SEC v. Kohler, et al.*, E.D. Pa. 2009)	Tippee	Settlement	• Permanent injunction • $85,631 disgorgement
1/25/2011	Swiss Real Estate International Holding AG (*SEC v. Kohler, et al.*, E.D. Pa. 2009)	Tippee	Settlement	• Permanent injunction • $214,369 disgorgement
1/25/2011	Sacho Todorov Dermendjiev (*SEC v. Kohler, et al.*, E.D. Pa. 2009)	Relief Defendant	Settlement	• $74,655 disgorgement
1/31/2011	Mark Kurland (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $4,213,630 disgorgement • $204,554 prejudgment interest

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
2/1/2011	Robert Moffat (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tipper	Settlement	• Permanent injunction • Officer/director bar
2/1/2011	New Castle Funds LLC (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y 2009)	Tippee	Settlement	• Action dismissed because entity has ceased doing business
2/4/2011	Ali Hariri (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tipper/ Tipee	Settlement	• Permanent injunction • $2,666 disgorgement and prejudgment interest • Officer/director bar
2/9/2011	Jeffrey Glover (*SEC v. Devlin, et al.*, S.D.N.Y. 2008)	Tippee	Settlement	• Permanent injunction • $209,356 disgorgement • $55,390 prejudgment interest • $306,761 civil penalty
2/9/2011	Frederick Bowers (*SEC v. Devlin, et al.*, S.D.N.Y. 2008)	Tippee/ Tipper	Settlement	• Permanent injunction • $12,000 civil penalty
2/9/2011	Thomas Faulhaber (*SEC v. Devlin, et al.*, S.D.N.Y. 2008)	Tippee	Settlement	• $235,300 disgorgement • $50,663 prejudgment interest • $235,300 civil penalty
2/9/2011	Eric Holzer (*SEC v. Devlin, et al.*, S.D.N.Y. 2008)	Tippee	Settlement	• Permanent injunction • $52,922 disgorgement • $25,055 prejudgment interest • $172,269 civil penalty
2/16/2011	Zhenyu Ni (*SEC v. Ni*, N.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $157,615 disgorgement and prejudgment interest • $157,066 civil penalty
3/3/2011	Gregory Seib (*SEC v. Seib*, N.D. Ga. 2011)	Tippee	Settlement	• Permanent injunction • $71,654 disgorgement • $13,394 prejudgment interest • $71,654 civil penalty

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SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
3/8/2011	Joseph Dawson (*SEC v. Dawson*, N.D. Ill. 2011)	Tippee	Settlement	• Permanent injunction • Disgorgement and prejudgment interest to be determined
3/11/2011	Robert Hollier (*SEC v. Hollier, et al.*, W.D. La. 2011)	Tipper	Settlement	• Permanent injunction • $41,800 disgorgement (jointly and severally with Dupuis) • $11,289 prejudgment interest (jointly and severally with Dupuis)
3/11/2011	Wayne Dupuis (*SEC v. Hollier, et al.*, W.D. La. 2011)	Tippee	Settlement	• Permanent injunction • $41,800 disgorgement (jointly and severally with Hollier) • $11,289 prejudgment interest (jointly and severally with Hollier) • $41,800 civil penalty
3/17/2011	Kim Ann Deskovick (*SEC v. Deskovick, et al.*, D.N.J. 2011)	Tipper	Settlement	• Permanent injunction • $68,277 civil penalty • 5 year officer/director bar
3/17/2011	Brian Haig (*SEC v. Deskovick, et al.*, D.N.J. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $68,277 disgorgement • $18,007 prejudgment interest • $34,138 civil penalty
3/23/2011	Daniel Wiener II (*SEC v. Wiener*, E.D. Va. 2011)	Tippee	Settlement	• Permanent injunction • $67,687 disgorgement • $8,323 prejudgment interest • $25,000 civil penalty
3/24/2011	Mark Duffell (*SEC v. Duffell*, N.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $162,500 disgorgement • $7,163 prejudgment interest • $162,500 civil penalty
3/31/2011	Robert Tocci (*SEC v. Scoppetuolo, et al.*, S.D. Fla. 2010)	Tippee	Settlement	• Permanent injunction • $295,976 disgorgement • $40,507 prejudgment interest • Civil penalty to be determined

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
4/13/2011	FrontPoint Healthcare Flagship Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/13/2011	FrontPoint Healthcare Horizons Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/13/2011	FrontPoint Healthcare I Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/13/2011	FrontPoint Healthcare Flagship Enhanced Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/13/2011	FrontPoint Healthcare Long Horizons Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/13/2011	FrontPoint Healthcare Centennial Fund, L.P. (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Relief Defendant	Settlement	• $29,017,156 disgorgement (jointly and severally with 5 other FrontPoint hedge funds) • $4,003,669 prejudgment interest (jointly and severally with 5 other FrontPoint hedge funds)
4/15/2011	Steven Scoppetuolo (*SEC v. Scoppetuolo, et al.*, S.D. Fla. 2010)	Tipper	Settlement	• Permanent injunction • $75,000 civil penalty • Officer/director bar

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
4/18/2011	Oscar Ronzoni (*SEC v. Di Nardo, et al.*, S.D.N.Y. 2008)	Tippee	Settlement	• Permanent injunction • $967,700 disgorgement (jointly and severally liable with Busardo, Tatus, and A-Round) • $8,689 prejudgment interest (jointly and severally liable with Busardo, Tatus, and A-Round) • $483,850 civil penalty (jointly and severally liable with Busardo, Tatus, and A-Round)
4/18/2011	Paolo Busardo (*SEC v. Di Nardo, et al.*, S.D.N.Y. 2008)	Tippee	Settlement	• Permanent injunction • $967,700 disgorgement (jointly and severally liable with Ronzoni, Tatus, and A-Round) • $8,689 prejudgment interest (jointly and severally liable with Ronzoni, Tatus, and A-Round) • $483,850 civil penalty (jointly and severally liable with Ronzoni, Tatus, and A-Round)
4/18/2011	Tatus Corp. (*SEC v. Di Nardo, et al.*, S.D.N.Y. 2008)	Relief Defendant	Settlement	• $967,700 disgorgement (jointly and severally liable with Busardo, Ronzoni, and A-Round) • $8,689 prejudgment interest (jointly and severally liable with Busardo, Ronzoni, and A-Round) • $483,850 civil penalty (jointly and severally liable with Busardo, Ronzoni, and A-Round)
4/18/2011	A-Round Investment SA (*SEC v. Di Nardo, et al.*, S.D.N.Y. 2008)	Relief Defendant	Settlement	• $967,700 disgorgement (jointly and severally liable with Busardo, Ronzoni, and Tatus) • $8,689 prejudgment interest (jointly and severally liable with Busardo, Ronzoni, and Tatus) • $483,850 civil penalty (jointly and severally liable with Busardo, Ronzoni, and Tatus)
4/25/2011	Juan Jose Fernandez Garcia (*SEC v. Garcia*, N.D. Ill. 2010)	Tippee	Settlement	• Permanent injunction • $576,033 disgorgement • $50,000 civil penalty
4/25/2011	Thomas Hardin (*SEC v. Lanexa Management LLC, et al.*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $19,310 disgorgement • $2,426 prejudgment interest • Civil penalty to be determined

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SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
4/28/2011	Jonathan Hollander (*SEC v. Hollander*, S.D.N.Y. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $95,807 disgorgement and prejudgment interest • $95,807 civil penalty • 3 year broker/dealer/investment adviser bar
5/11/2011	Dennis Higgins (*SEC v. Michael Baker Corp, et al.*, S.D. Tex. 2011)	Tippee	Settlement	• Permanent injunction • $16,930 disgorgement • $2,035 prejudgment interest • $16,930 civil penalty
5/17/2011	Mary Beth Knight (*SEC v. Knight, et al.*, D. Ariz. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $185,111 disgorgement • $185,111 civil penalty
5/17/2011	Rebecca Norton (*SEC v. Knight, et al.*, D. Ariz. 2011)	Tippee	Settlement	• Permanent injunction • Civil penalty to be determined
5/24/2011	Giuseppe Tullio Abatemarco (*SEC v. Abatemarco*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $1,193,594 disgorgement • $1,439 prejudgment interest • $250,667 civil penalty
5/24/2011	Abraham Haim (*SEC v. Haim*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $30,126 disgorgement • $7,188 prejudgment interest • $30,126 civil penalty
5/31/2011	Adam Smith (*SEC v. Smith*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $149,706 disgorgement and prejudgment interest
6/3/2011	Dean Goetz (*SEC v. Goetz*, S.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $11,418 disgorgement • $926 prejudgment interest • $11,418 civil penalty
6/6/2011	Thomas Hardin (*SEC v. Hardin*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $33,322 disgorgement • $6,749 prejudgment interest

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SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
6/8/2011	Onele Trading & Finance Ltd. (*SEC v. Onele Trading & Finance Ltd.*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $2,864,638 disgorgement • $2,864,638 civil penalty
6/8/2011	Gautham Shankar (*SEC v. Cutillo, et al.*, 2009)	Tippee	Settlement	• Permanent injunction • $111,521 disgorgement • $13,292 prejudgment interest • Civil penalty to be determined
6/8/2011	Shammara Hussain (*SEC v. Feinblatt*, S.D.N.Y. 2011)	Tipper	Settlement	• Permanent injunction • $21,620 disgorgement • $4,795 prejudgment interest • $21,620 civil penalty
6/8/2011	Trivium Capital Management LLC (*SEC v. Feinblatt*, S.D.N.Y. 2011)	Tippee	Settlement	• Action dismissed because entity has ceased doing business
6/21/2011	Gautham Shankar (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $243,106 disgorgement • $34,462 prejudgment interest • Civil penalty to be determined
6/27/2011	Edward Meyer, Jr. (*SEC v. Verdiramo, et al.*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $14,000 disgorgement • $14,000 civil penalty
6/30/2011	David Plate (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $43,876 disgorgement • $9,416 prejudgment interest • Civil penalty to be determined
7/5/2011	Peter Talbot (*SEC v. Binette, et al.*, D. Mass. 2009)	Tippee/ Tipper	Settlement	• Permanent injunction • $615,000 disgorgement (jointly and severally liable with Binette) • $76,235 prejudgment interest (jointly and severally liable with Binette) • $1,845,000 civil penalty

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
7/5/2011	Carl Binette (*SEC v. Binette, et al.*, D. Mass. 2009)	Tippee	Settlement	• Permanent injunction • $615,000 disgorgement (jointly and severally liable with Talbot) • $76,235 prejudgment interest (jointly and severally liable with Talbot) • $1,845,000 civil penalty
7/11/2011	Jeffrey Yokuty (*SEC v. Feinblatt*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $127,595 disgorgement • $34,935 prejudgment interest • $127,595 civil penalty
7/12/2011	Daniel DeVore (*SEC v. Longoria, et al.*, S.D.N.Y. 2011)	Tipper	Settlement	• Permanent injunction • $145,750 disgorgement • $6,099 prejudgment interest • Officer/director bar
7/13/2011	Donald Johnson (*SEC v. Johnson*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • Disgorgement and prejudgment interest to be determined • Civil penalty to be determined
7/15/2011	Danielle Chiesi (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee/ Tipper	Settlement	• Permanent injunction • $500,000 disgorgement • $40,535 prejudgment interest
7/15/2011	Vinayak Gowrish (*SEC v. Gowrish*, N.D. Cal. 2009)	Tipper	Trial	• Permanent injunction • $12,000 disgorgement • Prejudgment interest to be determined • $100,000 civil penalty
7/18/2011	Michael Cardillo (*SEC v. Cardillo*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $58,520 disgorgement • $9,523 prejudgment interest • $29,260 civil penalty
7/18/2011	Robert Feinblatt (*SEC v. Feinblatt*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $829,765 disgorgement • $186,023 prejudgment interest • $1,659,530 civil penalty

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
7/20/2011	Howard Wildstein (*SEC v. Wildstein*, D.D.C. 2011)	Tippee	Settlement	• Permanent injunction • $51,177 disgorgement • $12,495 prejudgment interest • $51,177 civil penalty
7/20/2011	Robert Doyle (*SEC v. Doyle*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $88,555 disgorgement • $4,289 prejudgment interest • $44,278 civil penalty
7/26/2011	Franz Tudor (*SEC v. Tudor*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $70,807 disgorgement • $7,331 prejudgment interest
8/1/2011	Eric Gordon (*SEC v. Scoppetuolo, et al.*, S.D. Fla. 2010)	Tippee	Settlement	• Permanent injunction • Disgorgement, prejudgment interest, and civil penalty to be determined
8/3/2011	William Marovitz (*SEC v. Marovitz*, N.D. Ill. 2011)	Tippee	Settlement	• Permanent injunction • $168,352 disgorgement, prejudgment interest, and civil penalties
8/4/2011	Doug DeCinces (*SEC v. DeCinces, et al.*, C.D. Cal. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $1,282,691 disgorgement • $19,311 prejudgment interest • $1,197,998 civil penalty
8/4/2011	Joseph Donohue (*SEC v. DeCinces, et al.*, C.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $75,570 disgorgement • $37,785 civil penalty
8/4/2011	Fred Scott Jackson (*SEC v. DeCinces, et al.*, C.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $140,259 disgorgement • $12,508 prejudgment interest • $140,259 civil penalty
8/4/2011	Roger Wittenbach (*SEC v. DeCinces, et al.*, C.D. Cal. 2011)	Tippee	Settlement	• Permanent injunction • $201,692 disgorgement • $5,768 prejudgment interest • $214,906 civil penalty

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
8/24/2011	Deep Shah (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2011)	Tipper	Default Judgment	• Permanent injunction • $8,201,465 disgorgement • $1,755,865 prejudgment interest • $24,604,395 civil penalty
8/31/2011	Anthony Scolaro (*SEC v. Scolaro*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $125,980 disgorgement • $14,420 prejudgment interest • $62,945 civil penalty • Broker/dealer/investment adviser bar
8/31/2011	Diamondback Capital Management, LLC (*SEC v. Scolaro*, S.D.N.Y. 2011)	Relief Defendant	Settlement	• $962,486 disgorgement • $110,246 prejudgment interest
8/31/2011	Scott Robarge (*SEC v. Clay Capital Management, LLC, et al.*, D.N.J. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $232,592 disgorgement • $31,885 prejudgment interest • $232,592 civil penalty
8/31/2011	Mark Durbin (*SEC v. Clay Capital Management, LLC, et al.*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $8,391 disgorgement • $1,111 prejudgment interest • $8,391 civil penalty
8/31/2011	James Li (*SEC v. Li, et al.*, D. Ariz. 2011)	Tippee	Settlement	• Permanent injunction • Disgorgement, prejudgment interest, and civil penalty to be determined • Officer/director bar
9/12/2011	Alfred Teo (*SEC v. Teo, et al.*, D.N.J. 2004)	Tippee	Trial	• Permanent injunction • $21,087,345 disgorgement • Prejudgment interest to be determined • Civil penalty to be determined
9/12/2011	Donald Longueuil (*SEC v. Longoria, et al.*, S.D.N.Y. 2011)	Tippee	Settlement	• Permanent injunction • $250,000 disgorgement • $102,833 prejudgment interest

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
9/19/2011	Sunil Bhalla (*SEC v. Feinblatt*, S.D.N.Y. 2011)	Tipper	Settlement	• Permanent injunction • $85,000 civil penalty • 5 year officer/director bar
9/30/2011	Steven Fortuna (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $193,536 disgorgement • $11,040 prejudgment interest • $96,768 civil penalty
9/30/2011	S2 Capital Management, LP (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Relief Defendant	Settlement	• Action dismissed because entity has ceased doing business
10/3/2011	Richard Hansen (*SEC v. Hansen, et al.*, E.D. Pa. 2010)	Tippee	Settlement	• Permanent injunction • $63,038 disgorgement and prejudgment interest • Officer/director bar
10/11/2011	M. Jason Hanold (*SEC v. Hanold*, N.D. Ill. 2011)	Tippee	Settlement	• Permanent injunction • $20,766 disgorgement, prejudgment interest, and civil penalty
10/17/2011	Jason Goldfarb (*SEC v. Cutillo, et al.*, S.D.N.Y. 2009	Tippee/ Tipper	Settlement	• Permanent injunction • $32,500 disgorgement • $4,204 prejudgment interest
10/17/2011	Arthur Cutillo (*SEC v. Cutillo, et al.*, S.D.N.Y. 2009)	Tipper	Settlement	• Permanent injunction • $32,500 disgorgement • $4,204 prejudgment interest
10/25/2011	Annabel McClellan (*SEC v. McClellan, et al.*, N.D. Cal. 2010)	Tippee/ Tipper	Settlement	• Permanent injunction • $1,000,000 civil penalty
10/27/2011	Galleon Management LP (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Relief Defendant	Settlement	• Permanent injunction • Jointly and severally liable for monetary sanctions ordered against former principal, Raj Rajaratnam (see page 39)

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SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
11/8/2011	Raj Rajaratnam (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee/ Tipper	Summary Judgment	• Permanent injunction • $92,805,705 civil penalty • Unspecified disgorgement and prejudgment deemed satisfied by the forfeiture ordered in criminal case
11/9/2011	Mark Anthony Longoria (*SEC v. Longoria*, S.D.N.Y. 2011)	Tipper	Settlement	• Permanent injunction • $178,850 disgorgement • $18,329 prejudgment interest • Officer/director bar
11/16/2011	Joseph F. "Chip" Skowron III (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Tippee	Settlement	• Permanent injunction • $29,017,156 disgorgement (joint/ several with relief defendants) • $1,360,000 disgorgement (individual) • $5,142,782 prejudgment interest • $2,720,000 civil penalty
11/16/2011	Yves M. Benhamou (*SEC v. Skowron, et al.*, S.D.N.Y. 2010)	Tipper	Settlement	• Permanent injunction • $52,138 disgorgement • $8,237 prejudgment interest
11/18/2011	Mark A. Konyndyk (*SEC v. Konyndyk*, D.D.C. 2011)	Tippee	Settlement	• Permanent injunction • $9,725 disgorgement • $1,789 prejudgment interest • $9,725 civil penalty
11/23/2011	Jeffrey Richardson (*SEC v. Richardson*, S.D.N.Y. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $88,026 disgorgement • $21,534 prejudgment interest • $88,026 civil penalty
11/26/2011	Cheng Yi Lang (*SEC v. Lang*, D. Md. 2011)	Tippee	Settlement	• Permanent injunction • $3,776,152 disgorgement
12/5/2011	Zvi Goffer (*SEC v. Galleon Management, LP, et al.*, S.D.N.Y. 2009)	Tippee	Settlement	• Permanent injunction • $265,709 disgorgement • $59,565 prejudgment interest

Appendix A

SEC ENFORCEMENT ACTIONS (cont'd)

Date	Defendant	Role	Trial or Settlement	Outcome
12/9/2011	Zvi Goffer (*SEC v. Cutillo, et al.*, S.D.N.Y. 2009)	Tippee/ Tipper	Settlement	• Permanent injunction • $1,014,758 disgorgement • $231,304 prejudgment interest
12/16/2011	John Easom (*SEC v. Easom, et al.*, D.N.J. 2011)	Tipper	Settlement	• Permanent injunction • 5 year officer/director bar • $327 disgorgement • $51 prejudgment interest • $10,000 civil penalty
12/16/2011	William Echeverri (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $150,121 disgorgement • $22,451 prejudgment interest • $227,428 civil penalty
12/16/2011	Victor Echeverri (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $12,477 disgorgement • $1,830 prejudgment interest
12/16/2011	Robert Miketich (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $31,455 disgorgement • $4,252 prejudgment interest • $41,455 civil penalty
12/16/2011	Joseph Mancuso (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $61,367 disgorgement • $8,998 prejudgment interest • $61,367 civil penalty
12/16/2011	Paul Qassis (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee/ Tipper	Settlement	• Permanent injunction • $22,168 disgorgement • $3,082 prejudgment interest • $80,000 civil penalty
12/21/2011	Gary Saggu (*SEC v. Easom, et al.*, D.N.J. 2011)	Tippee	Settlement	• Permanent injunction • $111,494 disgorgement • $15,074 prejudgment interest • $55,747 civil penalty

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