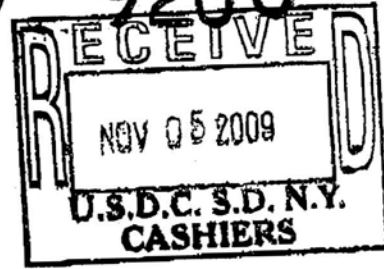


JUDGE KAPLAN

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

'09 CIV 9208



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**ARTHUR J. CUTILLO,
JASON C. GOLDFARB,
ZVI GOFFER,
CRAIG C. DRIMAL,
SCHOTTENFELD GROUP, LLC,
GAUTHAM SHANKAR,
DAVID PLATE,
EMANUEL GOFFER,
and
MICHAEL KIMELMAN,**

Defendants.

COMPLAINT

Civil Action No.

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY

1. This case involves serial insider trading by a ring of Wall Street traders and hedge fund managers who made over \$20 million in illicit profits by trading ahead of corporate acquisition announcements using inside information tipped by an attorney at Ropes & Gray LLP ("Ropes & Gray"), a prominent international law firm, in exchange for kickbacks. In this scheme, Arthur J. Cutillo, a lawyer in the New York office of Ropes & Gray, misappropriated from his law firm material, nonpublic information concerning at least four corporate acquisitions or bids involving Ropes & Gray clients: the 2007 acquisitions of Alliance Data Systems Corp. ("ADS"), Avaya Inc. ("Avaya"), 3Com Corp. ("3Com"), and Axcan Pharma Inc. ("Axcan"). Using friend and fellow

attorney Jason Goldfarb as a conduit, Cutillo tipped inside information concerning these acquisitions to Zvi Goffer ("Zvi"), a proprietary trader at the broker-dealer Schottenfeld Group, LLC ("Schottenfeld").

2. Zvi -- known by some in the insider trading ring as "the Octopussy" because he had arms in so many sources of inside information -- traded on this inside information for Schottenfeld and had numerous direct and indirect tippees, including hedge fund managers and other professional traders who also traded. Zvi's downstream tippees included: Gautham Shankar and David Plate -- both of whom were Zvi's fellow proprietary traders at Schottenfeld; Craig Drimal, a professional trader; Emanuel Goffer (Zvi's brother), a proprietary trader at the broker-dealer Spectrum Trading, LLC ("Spectrum Trading"); Michael Kimelman, a professional trader at Lighthouse Financial Group, a New York-based investment bank and broker-dealer; and portfolio managers at two hedge fund advisers.

3. By virtue of their conduct alleged herein, each of the defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless enjoined, defendants are likely to commit such violations again in the future.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Exchange Act Sections 21(d)(1), 21(e), 21A, and 27 [15 U.S.C. §§ 78u(d)(1), (e), 78u-1, and 78aa]. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails in connection with the conduct alleged herein.

5. Venue is proper because certain acts or transactions constituting the violations occurred within this judicial district.

DEFENDANTS

6. **Arthur J. Cutillo** (“Cutillo”), age 33, is a resident of Ridgewood, New Jersey. Cutillo is an attorney at Ropes & Gray LLP.

7. **Jason C. Goldfarb** (“Goldfarb”), age 31, is a resident of New York, New York. He is an attorney in private practice in Brooklyn, New York.

8. **Zvi Goffer** (“Zvi”), age 32, is a resident of New York, New York. During the relevant time period, Zvi Goffer was a registered representative and proprietary trader at Schottenfeld Group, LLC, a registered broker-dealer. Currently, Zvi is employed at Echotrade LLC (“Echotrade”), a registered broker-dealer, and is also a trader at Incremental Capital, LLC (“Incremental Capital”).

9. **Craig C. Drimal** (“Drimal”), age 53, is a resident of Weston, Connecticut. Drimal is a trader who, during part of the relevant time period, worked out of the offices of Galleon Management, LP. Currently, Drimal is a registered representative at Echotrade, and is also a trader at Incremental Capital.

10. **Schottenfeld Group, LLC** (“Schottenfeld”) is a limited liability company located in New York, New York. Schottenfeld is a registered broker-dealer.

11. **Gautham Shankar** (“Shankar”), age 35, is a resident of New Canaan, Connecticut. During the relevant time period, Shankar was a registered representative and proprietary trader at Schottenfeld.

12. **David Plate** (“Plate”), age 34, is a resident of New York, New York. During the relevant time period, Plate was a registered representative and a proprietary

trader at Schottenfeld. Currently, Plate is a registered representative at G-2 Trading LLC, a registered broker-dealer.

13. **Emanuel Goffer ("Emanuel")**, age 31, is a resident of New York, New York. During part of the relevant time period, Emanuel Goffer was a registered representative and proprietary trader at Spectrum Trading, a registered broker-dealer. Currently, Emanuel Goffer is employed at Echotrade, and is also a trader at Incremental Capital.

14. **Michael A. Kimelman ("Kimelman")**, age 38, is a resident of Larchmont, New York. During the relevant time period, Kimelman was a trader at Lighthouse Financial Group, LLC, a New York-based investment bank and registered broker-dealer. Currently, Kimelman is a registered representative at Echotrade, and is also a trader at Incremental Capital.

OTHER RELEVANT ENTITY

15. **Ropes & Gray LLP** is a limited liability partnership and international law firm with offices in Boston, New York, Palo Alto, San Francisco, Tokyo, and Washington, DC.

FACTS

Cutillo, Goldfarb, and Zvi Devise the Insider Trading Scheme

16. Arthur Cutillo is an attorney at the international law firm of Ropes & Gray. He has worked in the firm's New York office since 2005. Throughout 2007, he had access to, and learned of, material nonpublic information concerning corporate acquisitions in which Ropes & Gray represented acquirers or bidders in proposed acquisitions. Cutillo owed a fiduciary or other duty of trust and confidence to Ropes &

Gray and its clients to keep this information confidential and not to disclose or personally use this information.

17. Information concerning an upcoming acquisition of a public company is valuable and material information. Normally, when a public company is acquired, the acquisition price is greater than the pre-announcement market price of the stock of the company being acquired. Thus, news of an actual or potential acquisition of a public company often results in an increase in the market price of the company's stock. A reasonable investor would consider information concerning an upcoming corporate acquisition important to his or her investment decision, and a significant alteration of the total mix of information available to the public concerning the company that is the subject of the acquisition.

18. In 2007, Cutillo, together with his friend Jason Goldfarb, a lawyer in private practice in New York, entered into a scheme with Zvi Goffler, a proprietary trader at Schottenfeld, to trade on material, nonpublic information concerning upcoming corporate acquisitions involving Ropes & Gray's clients. As part of this scheme, and in breach of his duty to Ropes & Gray and its clients, Cutillo misappropriated from his law firm material, nonpublic information concerning upcoming acquisitions involving the firm's clients. Cutillo, through Goldfarb, tipped this inside information to Zvi in exchange for kickbacks. Cutillo and Goldfarb tipped material, nonpublic information to Zvi concerning at least the following four proposed corporate acquisitions in which Ropes & Gray represented certain acquirers:

a. The May 17, 2007 announced acquisition of ADS by The Blackstone Group. ADS is a publicly traded company whose stock trades on the New York Stock Exchange;

b. The June 4, 2007 announced acquisition of Avaya by Silver Lake Partners and TPG LLP. Avaya was a publicly traded company whose stock traded on the New York Stock Exchange;

c. The September 28, 2007 announced acquisition of 3Com by Bain Capital, LLC and Huawei Technologies. 3Com is a publicly traded company whose stock trades on the NASDAQ; and

d. The November 29, 2007 announced acquisition of Axcan by TPG LLP. Axcan was a publicly traded company whose stock traded on the NASDAQ Global Market.

19. Goldfarb and Zvi knew, or should have known, that Cutillo tipped this information in breach of his fiduciary or other duty of trust and confidence owed to Ropes & Gray and its clients.

20. Zvi traded on this inside information and had numerous downstream tippees who also traded. As part of this illegal trading scheme, Cutillo, Goldfarb, and Zvi at times used disposable cell phones in an attempt to conceal the scheme. For example, prior to the announcement of the 3Com acquisition, Zvi gave one of his tippees a disposable cell phone that had two numbers programmed in it -- labeled "you" and "me." After the announcement of the 3Com acquisition, Zvi destroyed the disposable cell phone he had provided the tippee by removing the SIM card, biting it, breaking the phone in half, throwing away half of the phone, and instructing his tippee to get rid of the other half of the phone.

The Avaya Acquisition Announcement

21. On the evening of May 31, 2007, Silver Lake Partners and TPG, represented by Ropes & Gray, submitted a bid to acquire Avaya at \$17.50 per share. The bid was not publicly announced.

22. On May 31, 2007, Goldfarb called Cutillo. On June 1, 2007, Zvi talked to Goldfarb for six minutes. Cutillo tipped Goldfarb material, nonpublic information that Avaya was going to be acquired. Goldfarb then tipped Zvi this inside information.

23. Later in the day on June 1, 2007, Zvi talked to Craig Drimal, a professional trader. Zvi tipped Drimal the material, nonpublic information concerning the upcoming acquisition of Avaya that Cutillo misappropriated from his firm.

24. Drimal tipped the material, nonpublic information concerning the Avaya acquisition to a portfolio manager at Hedge Fund Adviser 1, which used the inside information to purchase shares of Avaya for its affiliated hedge funds.

25. Zvi traded on this material, nonpublic information concerning the Avaya acquisition in a proprietary account at Schottenfeld and tipped this inside information to Gautham Shankar and David Plate, who also traded in proprietary accounts at Schottenfeld. Zvi and his tippees at Schottenfeld all had authority to direct trading on behalf of Schottenfeld. Zvi also tipped this inside information to his brother Emanuel.

26. Zvi, Shankar, Plate, Emanuel, and Hedge Fund Adviser 1 all purchased shares of Avaya on June 1, 2007, based on the material, nonpublic information concerning the Avaya acquisition that had been misappropriated by Cutillo. Each defendant knew, or should have known, that this material, nonpublic information was obtained in breach of a fiduciary or other duty of trust and confidence owed to the source of the information.

27. After the market closed on June 4, 2007, Avaya announced that Silver Lake Partners and TPG would acquire Avaya for \$17.50 per share, a 5% premium over the closing price of the stock that day.

28. At the time the Avaya acquisition was announced on June 4, 2007, defendants and their tippees held 155,500 shares of stock and 305 call options in Avaya. They sold their Avaya holdings shortly after the public announcement of the proposed acquisition, realizing more than \$170,000 in illicit profits. The following is a summary of the defendants' and their tippees' illicit profits from their trading:

<u>Trader</u>	<u>Shares/Options</u>	<u>Illicit Profit</u>
Zvi Goffer	300 calls	\$20,400
Gautham Shankar	10,000	\$10,500
David Plate	15,000	\$10,870
Emanuel Goffer	500 and 5 calls	\$400
Hedge Fund Adviser 1	130,000	\$128,039

The 3Com Acquisition Announcement

29. In the summer of 2007, 3Com was pursuing the sale of its company. On July 28, 2007, Bain Capital, represented by Ropes & Gray, sent a letter to 3Com indicating interest in acquiring 3Com at a purchase price between \$5.25 - \$5.85 per share. On August 1 and 2, 2007, 3Com's management met with representatives of Bain Capital. On August 8, 2007, 3Com's counsel, Wilson Sonsini Goodrich & Rosati, sent a draft merger agreement to Ropes & Gray. In August and September 2007, Bain Capital conducted due diligence of 3Com.

30. On the evening of August 6, 2007, Cutillo made six telephone calls to Goldfarb. Cutillo tipped Goldfarb material, nonpublic information concerning the acquisition of 3Com, which Cutillo misappropriated from Ropes & Gray. After the calls with Cutillo, Goldfarb talked to Zvi on the telephone that same night. Goldfarb tipped Zvi the material, nonpublic information concerning the upcoming acquisition of 3Com that Cutillo misappropriated from his firm.

31. After talking to Goldfarb on the night of August 6, 2007, Zvi called his brother Emanuel and tipped him the material, nonpublic information concerning the upcoming acquisition of 3Com. The following day, Emanuel began purchasing shares of 3Com.

32. On the morning of August 7, 2007, Zvi also talked to Drimal. Zvi tipped Drimal the material, nonpublic information concerning the upcoming acquisition of 3Com that Cutillo misappropriated from his firm. That same day, Drimal began purchasing shares of 3Com in his personal brokerage account. The following day, Drimal talked to Zvi again and purchased additional shares of 3Com.

33. In addition to Drimal and Zvi's brother Emanuel, Zvi tipped the inside information concerning the 3Com acquisition to his fellow proprietary traders at Schottenfeld -- Shankar and Plate; and his friend, Michael Kimelman, a trader at Lighthouse Financial Group.

34. These three tippers all purchased 3Com shares on August 7, 2007. Shankar and Plate purchased the shares in proprietary accounts at Schottenfeld. Zvi himself also began purchasing 3Com stock in a proprietary account at Schottenfeld the next day, August 8, 2007.

35. Certain of Zvi's tippers also tipped the inside information to others that traded. Drimal tipped the 3Com inside information to a portfolio manager at Hedge Fund Adviser 1, which used the inside information to purchase shares of 3Com for its affiliated hedge funds.

36. Shankar provided the 3Com tip to his friend, a portfolio manager at Hedge Fund Adviser 2, which used the inside information to purchase shares of 3Com for its affiliated hedge funds.

37. From August to September 2007, Zvi, Emanuel, Drimal, Shankar, Plate, Kimelman, and Hedge Fund Advisers 1 and 2 all purchased shares of 3Com based on the inside information misappropriated by Cutillo. Each defendant knew, or should have known, that this material, nonpublic information was obtained in breach of a fiduciary or other duty of trust and confidence owed to the source of the information.

38. On September 28, 2007, 3Com announced that it would be acquired by Bain Capital and Huawei Technologies at a purchase price of \$5.30 a share, which represented a premium of approximately 44% over the previous day's closing price of \$3.68 per share.

39. At the time the 3Com acquisition was announced on September 28, 2007, defendants and their tippees held 8,828,171 shares of stock in 3Com. They sold their 3Com holdings shortly after the public announcement of the proposed 3Com acquisition, realizing more than \$11 million in illicit profits. The following is a summary of the defendants' and their tippees' illicit profits from their trading:

<u>Trader</u>	<u>Shares</u>	<u>Illicit Profit</u>
Zvi Goffer	260,000	\$378,608
Craig Drimal	3,261,386	\$4,499,495
Emanuel Goffer	512,200	\$723,525
Gautham Shankar	180,000	\$212,541
David Plate	410,000	\$498,534
Michael Kimelman	203,298	\$273,255
Hedge Fund Advisers 1 and 2	4,001,287	\$4,970,990

The Axcan Acquisition Announcement

40. In early 2007, Axcan's board of directors began to pursue the possibility of selling the company. After an August 9, 2007 board meeting, Axcan established a data room and made senior management available for potential purchasers to conduct due diligence. Axcan's financial adviser, Merrill Lynch, requested that potential purchasers submit indications of interest, including purchase price ranges, by October 26, 2007. TPG Capital, a private equity firm, was one of the bidders for Axcan. Ropes & Gray represented TPG Capital in connection with the transaction.

41. On October 25, 2007, Cutillo called Goldfarb four times between 7:11 p.m. and 7:55 p.m. Cutillo tipped Goldfarb material, nonpublic information that Axcan was going to be acquired.

42. That same night at 8:51 p.m, Goldfarb called Zvi. Goldfarb tipped Zvi the material, nonpublic information concerning the upcoming acquisition of Axcan that Cutillo misappropriated from his firm.

43. On the morning of October 26, 2007, Zvi talked to Drimal. Zvi tipped Drimal the material, nonpublic information concerning the upcoming acquisition of Axcan that Cutillo misappropriated from his firm. That same day Drimal began purchasing shares of Axcan in his personal brokerage account.

44. Drimal tipped the material, nonpublic information concerning the Axcan acquisition to a portfolio manager at Hedge Fund Adviser 1, which used the inside information to purchase shares of Axcan for its affiliated hedge funds.

45. In addition to Drimal, Zvi tipped this inside information concerning the Axcan acquisition to his fellow proprietary traders at Schottenfeld, Shankar and Plate,

who used the tip to purchase shares of Axcan in proprietary accounts at Schottenfeld. Plate also purchased shares of Axcan in the account of a family member.

46. From October to November 2007, Drimal, Shankar, Plate, and Hedge Fund Adviser 1 all purchased shares of Axcan based on inside information misappropriated by Cutillo. Each defendant knew, or should have known, that this material, nonpublic information was obtained in breach of a fiduciary or other duty of trust and confidence owed to the source of the information.

47. On November 29, 2007, Axcan announced that TPG Capital would acquire Axcan at a price of \$23.35 per share, which represented a premium of about 28% over the previous day's closing price.

48. At the time the Axcan acquisition was announced on November 29, 2007, defendants and their tippees held 1,743,023 shares of Axcan stock. They then sold their Axcan shares shortly after the public announcement of the proposed acquisition, realizing more than \$7 million in illicit profits. The following is a summary of the defendants' and their tippees' illicit profits from their trading:

<u>Trader</u>	<u>Shares</u>	<u>Illicit Profit</u>
Craig Drimal	565,523	\$1,974,235
Gautham Shankar	45,000	\$188,720
David Plate	51,700	\$251,555
Hedge Fund Adviser 1	1,080,800	\$5,517,885

49. Shortly after the Axcan acquisition announcement, Drimal paid cash kickbacks to Zvi who in turn paid kickbacks to Goldfarb.

50. Drimal, who made over \$6 million in profits as a result of the 3Com and Axcan tips he received from Zvi, helped Zvi obtain employment at Galleon in early 2008.

Zvi subsequently left Galleon and, together with his tippees Emanuel, Drimal, and Kimelman, formed a new trading entity called Incremental Capital.

CLAIM

(Insider Trading in Connection with the Purchase or Sale of Securities)

(Violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 Thereunder [17 C.F.R. § 240.10b-5])

51. Paragraphs 1 through 50 are realleged and incorporated by reference.

52. As described above, defendants Cutillo, Goldfarb, Zvi, Drimal, Schottenfeld, Shankar, Plate, Emanuel, and Kimelman engaged in an illegal insider trading scheme in which each used material, nonpublic information concerning upcoming corporate acquisitions to purchase securities, and/or tipped others who used that inside information to purchase securities.

53. By reason of the conduct described above, defendants Cutillo, Goldfarb, Zvi, Drimal, Schottenfeld, Shankar, Plate, Emanuel, and Kimelman, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

54. By reason of the conduct described above, defendants Cutillo, Goldfarb, Zvi, Drimal, Schottenfeld, Shankar, Plate, Emanuel, and Kimelman violated Exchange

Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:


A. permanently enjoining defendants Cutillo, Goldfarb, Zvi, Drimal, Schottenfeld, Shankar, Plate, Emanuel, and Kimelman from violating Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

B. ordering each defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains received as a result of the conduct alleged in this Complaint, including, as to each defendant, their own illicit trading profits or other ill-gotten gains, and, as to each tipper, the illicit trading profits or other ill-gotten gains of their direct and downstream tippees;

C. ordering each defendant to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and

D. granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



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