

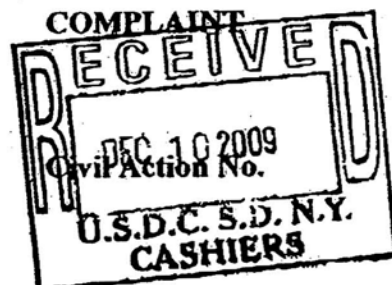
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIEN P. SANTARLAS,

Defendant.



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 attorneys at Ropes & Gray LLP ("Ropes & Gray"), a prominent international law firm, in exchange for kickbacks. In this scheme, Arthur J. Cutillo and Brien P. Santarlas, lawyers in the New York office of Ropes & Gray, misappropriated from their law firm material, nonpublic information concerning corporate acquisitions or bids involving Ropes & Gray clients. Working with Cutillo, Defendant Santarlas misappropriated material, nonpublic information concerning at least two acquisitions: the 2007 acquisitions of 3Com Corp. ("3Com") and Axcan Pharma Inc. ("Axcan"). Using Cutillo's friend and fellow attorney Jason Goldfarb as a conduit, Cutillo and Santarlas 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 his conduct alleged herein, Santarlas 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, he is 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]. Santarlas, 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.

**DEFENDANT**

6. **Brien P. Santarlas** (“Santarlas”), age 33, is a resident of Hoboken, New Jersey. During the relevant time period, Santarlas was an attorney in the New York office of Ropes & Gray LLP. He left the firm in September 2008.

**OTHER RELEVANT INDIVIDUALS AND ENTITIES**

7. **Arthur J. Cutillo** (“Cutillo”), age 33, is a resident of Ridgewood, New Jersey. During the relevant time period, Cutillo was an attorney in the New York office of Ropes & Gray LLP. He left the firm in November 2009.

8. **Jason C. Goldfarb** (“Goldfarb”), age 31, is a resident of New York, New York. During the relevant time period, he was an attorney in private practice in Brooklyn, New York.

9. **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.

10. **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.

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

12. **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.

13. **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.

14. **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.

15. **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.

16. **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

### The Insider Trading Scheme

17. In 2007, Arthur Cutillo and Brien Santarlas were attorneys at the international law firm of Ropes & Gray. They each worked in the firm’s New York office. While employed at Ropes & Gray, Cutillo and Santarlas had access to, and learned of, material nonpublic information concerning corporate acquisitions in which Ropes & Gray represented acquirers or bidders in proposed acquisitions. Santarlas gained access to material, nonpublic information by, among other means, accessing Ropes & Gray’s computer network and viewing confidential deal documents concerning proposed acquisitions. Cutillo and Santarlas 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.

18. 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.

19. In 2007, Cutillo and Santarlas, together with Cutillo's friend Jason Goldfarb, a lawyer in private practice in New York, entered into a scheme with Zvi Goffer, 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 their duties to Ropes & Gray and its clients, Cutillo and Santarlas misappropriated from their law firm material, nonpublic information concerning upcoming acquisitions involving the firm's clients. Cutillo and Santarlas, through Goldfarb, tipped this inside information to Zvi in exchange for kickbacks. Santarlas, Cutillo, and Goldfarb tipped material, nonpublic information to Zvi concerning at least the following two proposed corporate acquisitions in which Ropes & Gray represented certain acquirers:

a. 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

b. 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.

20. Zvi traded on this inside information and had numerous downstream tippees who also traded. As part of this illegal trading scheme, Santarlas, Cutillo, Goldfarb, and Zvi at times used disposable cell phones in an attempt to conceal the scheme.

#### The 3Com Acquisition Announcement

21. 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.

22. By virtue of their employment at Ropes & Gray, Cutillo and Santarlas had access to, and learned of, material nonpublic information concerning the acquisition of 3Com. Cutillo and Santarlas tipped Goldfarb material, nonpublic information concerning the acquisition of 3Com, which they misappropriated from Ropes & Gray.

23. 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 and Santarlas 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 and Santarlas misappropriated from their firm.

24. Zvi traded on the material, nonpublic information concerning the acquisition of 3Com, and had numerous direct and downstream tippees that also traded, including: his brother Emanuel; Craig Drimal; fellow Schottenfeld proprietary traders Shankar and Plate; Michael Kimelman, a trader at Lighthouse Financial Group; and Hedge Fund Advisers 1 and 2.

25. 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 and Santarlas.

26. 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.

27. At the time the 3Com acquisition was announced on September 28, 2007, Zvi, Emanuel, Drimal, Shankar, Plate, Kimelman, and Hedge Fund Advisers 1 and 2 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 their illicit trading profits:

<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

28. Following the 3Com acquisition announcement, Goldfarb paid cash kickbacks to Cutillo and Santarlas. Santarlas received \$7,500 in cash.

**The Axcan Acquisition Announcement**

29. 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.

30. By virtue of their employment at Ropes & Gray, Cutillo and Santarlas had access to, and learned of, material nonpublic information concerning the acquisition of Axcan. Cutillo and Santarlas tipped Goldfarb material, nonpublic information concerning the acquisition of Axcan, which they misappropriated from Ropes & Gray.

31. 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. 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 and Santarlas misappropriated from their firm.



32. Zvi tipped the material, nonpublic information concerning the acquisition of Axcan to others who traded. Zvi's direct and downstream tippees included: Drimal; fellow Schottenfeld proprietary traders Shankar and Plate; and Hedge Fund Adviser 1.

33. 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 and Santarlas.

34. 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.

35. At the time the Axcan acquisition was announced on November 29, 2007, Drimal, Shankar, Plate, and Hedge Fund Adviser 1 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 their illicit trading profits:

<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

36. Following the Axcan acquisition announcement, Drimal paid cash kickbacks to Zvi who in turn paid kickbacks to Goldfarb. Goldfarb then paid cash kickbacks to Cutillo and Santarlas. Santarlas received \$25,000 in cash.

## **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])**

37. Paragraphs 1 through 36 are realleged and incorporated by reference.

38. As described above, Santarlas engaged in an illegal insider trading scheme in which he used material, nonpublic information concerning upcoming corporate acquisitions to purchase securities, and/or tipped others who used that inside information to purchase securities.

39. By reason of the conduct described above, Santarlas, 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.

40. By reason of the conduct described above, Santarlas 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 Santarlas 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 Santarlas to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint, including, the illicit trading profits or other ill-gotten gains of his direct and downstream tippees;
- C. ordering Santarlas 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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Dated: December 10, 2009