

Approved:

Andrew L. Fish
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Assistant United States Attorneys

Before: HONORABLE THEODORE H. KATZ
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	: SEALED
	: <u>COMPLAINT</u>
	:
-v.-	: Violations of
ZVI GOFFER,	: 18 U.S.C. § 371;
ARTHUR CUTILLO,	: 15 U.S.C. §§ 78j(b),
JASON GOLDFARB,	: 78ff; 17 C.F.R. §§
CRAIG DRIMAL,	: 240.10b-5, 240.10b5-
EMANUEL GOFFER,	: 2
MICHAEL KIMELMAN, and	:
DAVID PLATE,	:
	:
Defendants.	: COUNTY OF OFFENSE:
	: NEW YORK
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SOUTHERN DISTRICT OF NEW YORK, ss.:

DAVID MAKOL, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation (the "FBI") and charges as follows:

COUNT ONE

(Conspiracy)

1. From at least in or about April 2007 up to and including at least in or about May 2008, in the Southern District of New York and elsewhere, ZVI GOFFER, ARTHUR CUTILLO, JASON GOLDFARB, CRAIG DRIMAL, EMANUEL GOFFER, MICHAEL KIMELMAN, and DAVID PLATE, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff,

and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

2. It was a part and an object of the conspiracy that ZVI GOFFER, ARTHUR CUTILLO, JASON GOLDFARB, CRAIG DRIMAL, EMANUEL GOFFER, MICHAEL KIMELMAN, and DAVID PLATE, the defendants, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Overt Acts

3. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about August 7, 2007, ZVI GOFFER, the defendant, caused the purchase of 75,000 shares of 3Com Corporation ("3Com") stock.

b. On or about August 7, 2007, CRAIG DRIMAL, the defendant, caused the purchase of 525,000 shares of 3Com stock.

c. On or about August 7, 2007, EMANUEL GOFFER, the defendant, caused the purchase of 30,000 shares of 3Com stock.

d. On or about August 7, 2007, MICHAEL KIMELMAN, the defendant, caused the purchase of 15,000 shares of 3Com stock.

e. On or about August 7, 2007, DAVID PLATE, the defendant, caused the purchase of 65,000 shares of 3Com stock.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX

(Securities Fraud)

4. On or about the dates set forth below, in the Southern District of New York and elsewhere, the defendants set forth below unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, the defendants set forth below caused the listed securities transactions to be executed based on material, nonpublic information.

COUNT	DEFENDANT	DATE	TRANSACTION
TWO	ZVI GOFFER ARTHUR CUTILLO JASON GOLDFARB	8/7/2007	Purchase of 75,000 shares of 3Com stock
THREE	CRAIG DRIMAL	8/7/2007	Purchase of 525,000 shares of 3Com stock
FOUR	EMANUEL GOFFER	8/7/2007	Purchase of 30,000 shares of 3Com stock
FIVE	MICHAEL KIMELMAN	8/7/2007	Purchase of 15,000 shares of 3Com stock
SIX	DAVID PLATE	8/7/2007	Purchase of 65,000 shares of 3Com stock

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5 and
240.10b5-2, and Title 18, United States Code, Section 2.)

The basis for my knowledge and the foregoing charge is, in part, as follows:

5. I have been a Special Agent with the FBI for approximately seven years. I am currently assigned to a squad

responsible for investigating violations of the federal securities laws and related offenses. I have participated in numerous investigations of such offenses, and I have made and participated in making arrests of numerous individuals for participating in such offenses.

6. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including: (a) information provided to me by the United States Securities and Exchange Commission (the "SEC"); (b) business records and other documents obtained from various entities; (c) publicly available documents; (d) analysis of court authorized pen register records and telephone toll records; (e) information obtained from cooperating sources, including consensually recorded conversations between cooperating sources and others; (f) conversations with other FBI agents and my review of reports prepared by other FBI agents; and (g) court-authorized wiretaps on the following cellular telephones: (1) a cellular telephone used by CRAIG DRIMAL, the defendant (the "DRIMAL CELLPHONE"), over which wire communications were intercepted between on or about November 16, 2007, and on or about December 15, 2007; and between on or about December 17, 2007, and on or about January 15, 2008; (2) a cellular telephone used by ZVI GOFFER, the defendant (the "GOFFER CELLPHONE"), over which wire and electronic communications were intercepted between on or about December 11, 2007, and on or about January 9, 2008; between on or about January 10, 2008, and on or about February 8, 2008; between on or about February 11, 2008, and on or about April 9, 2008; and between on or about April 10, 2008, and on or about May 9, 2008; and (3) a cellular telephone used by JASON GOLDFARB, the defendant (the "GOLDFARB CELLPHONE"), over which wire communications were intercepted between on or about February 7, 2008, and on or about March 6, 2008. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part. Where figures, calculations and dates are set forth herein, they are approximate.

Relevant Entities and Individuals

7. Based on information obtained from the SEC, documents publicly filed with the SEC, records obtained from the Financial Industry Regulatory Authority ("FINRA"), and information from certain cooperating sources, I am aware of the following:

- a. At all times relevant to this Complaint, The

Schottenfeld Group LLC ("Schottenfeld") was a broker dealer with offices in New York, New York.

b. At all times relevant to this Complaint, the Galleon Group ("Galleon"), based in New York, New York, operated a family of hedge funds.

c. ZVI GOFFER, the defendant, is an individual who worked at Schottenfeld from in or about January 2007 until in or about December 2007. From in or about January 2008 to in or about August 2008, ZVI GOFFER worked at Galleon. In or about 2008, ZVI GOFFER started operating a trading firm called Incremental Capital.

d. At all times relevant to this Complaint, ARTHUR CUTILLO, the defendant, was an attorney at the law firm of Ropes & Gray LLP ("Ropes & Gray"), in New York, New York.

e. At all times relevant to this Complaint, JASON GOLDFARB, the defendant, was an attorney who resided in New York, New York.

f. At all times relevant to this Complaint, CRAIG DRIMAL, the defendant, was an individual who worked in Galleon's office space, although he was not employed by Galleon.

g. EMANUEL GOFFER, the defendant, worked at Spectrum Trading LLC, a trading firm, from in or about January 2007, to in or about November 2007. EMANUEL GOFFER is currently associated with Incremental Capital.

h. MICHAEL KIMELMAN, the defendant, is an individual who is currently associated with Incremental Capital.

i. DAVID PLATE, the defendant, worked at Schottenfeld from in or about June 2006 through in or about March 2008. PLATE is currently associated with Incremental Capital.

j. CS-1 is an individual who, while working at a hedge fund, executed securities transactions based on material, nonpublic information. CS-1 has agreed to plead guilty to charges of conspiracy and securities fraud in connection with this conduct and to cooperate with the Government in the hope of receiving a reduced sentence. CS-1 has been cooperating with the FBI since in or about July 2007. The information CS-1 has provided has been corroborated by, among other things, trading records, pen register data, and telephone records.

General Overview

8. As set forth in more detail below, there is probable cause to believe that ZVI GOFFER, the defendant, operated an insider trading network, through which ZVI GOFFER would obtain material, nonpublic information (the "Inside Information") regarding certain public companies' planned merger and acquisition activity. This Inside Information had been disclosed in violation of duties of trust and confidence. ZVI GOFFER would then (1) use the information to execute profitable securities transactions and (2) provide the Inside Information to other conspirators so they could execute profitable securities transactions. There is probable cause to believe that ZVI GOFFER paid sources for Inside Information, and that ZVI GOFFER provided coconspirators with prepaid cellular telephones so that they could communicate in a manner that reduced the chances of detection by law enforcement.

9. There is probable cause to believe that ZVI GOFFER, the defendant, had several sources for Inside Information, including ARTHUR CUTILLO, the defendant. There is probable cause to believe that CUTILLO misappropriated material, nonpublic information from his employer, Ropes & Gray, regarding certain mergers and acquisition transactions in connection with which Ropes & Gray provided legal services. CUTILLO provided this Inside Information to JASON GOLDFARB, the defendant, who then provided the Inside Information to ZVI GOFFER. As set forth below, there is probable cause to believe that ZVI GOFFER and his coconspirators obtained and used for securities transactions Inside Information concerning mergers and acquisitions in which Ropes & Gray played a role, including the following:

a. The acquisition of Avaya, Inc. ("Avaya"), by Silver Lake and TPG Capital. On or about June 4, 2007, Avaya announced that it has entered into a definitive merger agreement to be acquired by Silver Lake and TPG Capital. The announcement stated that, under the terms of the transactions, "Avaya shareholders will receive \$17.50 in cash for each share of Avaya common stock they hold, representing a premium of approximately 28 percent over Avaya's closing share price of \$13.67 on May 25, 2007." According to the announcement, Ropes & Gray acted as legal advisor to Silver Lake and TPG Capital in connection with this transaction.

b. The acquisition of 3Com by Bain Capital Partners, LLC ("Bain Capital"). On or about September 28, 2007, 3Com announced that it had signed a definitive merger agreement to be acquired by affiliates of Bain Capital Partners, LLC. 3Com announced that "[u]nder the terms of the agreement, shareholders

will receive \$5.30 in cash for each share of 3Com common stock they hold. This represents a premium of approximately 44 percent over 3Com's closing price of \$3.68 on September 27, 2007." According to the announcement, Ropes & Gray acted as legal advisor to Bain Capital in connection with this transaction.

c. The acquisition of Axcan Pharma, Inc. ("Axcan"), by TPG Capital and its affiliates. On or about November 29, 2007, Axcan announced that it had entered into an agreement for Axcan to be acquired by TPG Capital and its affiliates in an all-cash transaction. The announcement stated that under "the terms of the transaction, TPG Capital and its affiliates will acquire all of the common shares of Axcan for an offer price of US \$23.35 per common share. The purchase price represents a 28 percent premium over the average trading price of Axcan's common shares on November 28, 2007" According to the announcement, Ropes & Gray provided legal advise to TPG Capital in connection with this transaction.

10. There is also probable cause to believe that ZVI GOFFER, the defendant, obtained from another individual ("CC-1") Inside Information concerning the following mergers and acquisitions, on the basis of which ZVI GOFFER and his conspirators engaged in securities trading:

a. The acquisition of Kronos, Inc. ("Kronos") by Hellman & Friedman Capital Partners VI, L.P. and its related funds. On or about March 23, 2007, Kronos announced that it had entered into a definitive agreement, under which Kronos shareholders would receive \$55.00 in cash for each share of Kronos common stock "representing a 34.4% premium over Kronos' closing share price from 20 trading days ago."

b. The acquisition of Hilton Hotels Corp. ("Hilton") by the Blackstone Group. On or about July 3, 2007, Hilton announced that it has entered into a definitive merger agreement with The Blackstone Group's real estate and corporate private equity funds in an all-cash transaction. The announcement stated that "[u]nder the terms of the agreement, Blackstone will acquire all the outstanding common stock of Hilton for \$47.50 per share. The price represents a premium of 40% over yesterday's closing stock price."