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Assistant United States Attorneys
ANDREW Z. MICHAELSON
Special Assistant United States Attorney

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

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	:	
UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
	:	
- v. -	:	Violations of 18 U.S.C.
	:	§§ 2, 371, 1512(c); 15
SAMIR BARAI,	:	U.S.C. §§ 78j(b), 78ff;
a/k/a "Sam," and	:	17 C.F.R. § 240.10b-5
DONALD LONGUEUIL,	:	
	:	COUNTY OF OFFENSE:
Defendants.	:	NEW YORK
	:	
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B. J. KANG, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

(Conspiracy to Commit Securities Fraud and Wire Fraud)

1. From at least in or about 2006 through in or about November 2010, in the Southern District of New York and elsewhere, SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, 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, Section 240.10b-5.

2. It was a part and object of the conspiracy that SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the 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, Section 240.10b-5.

3. It was further a part and an object of the conspiracy that SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

4. In furtherance of the conspiracy and to effect the illegal objects thereof, SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about May 23, 2008, BARAI and Noah Freeman ("Freeman"), who also has worked at hedge funds, had a telephone conversation with Winifred Jiau,¹ a consultant at an "expert networking" firm, to obtain material, nonpublic information ("Inside Information") about, among other companies, Marvell Technology Group, Ltd. ("Marvell"), a public company that trades over the NASDAQ;

¹ Winifred Jiau was arrested on or about December 28, 2010 based on a complaint (*United States v. Winifred Jiau*, 10 Mag. 2900 (S.D.N.Y.)) that charges her with conspiracy to commit securities fraud and securities fraud, in violation of Title 18, United States Code, Section 371, and Title 15, United States Code, Sections 78j(b) and 78ff.

b. In or about late May 2008, Freeman provided to LONGUEUIL Inside Information regarding Marvell;

c. On or about July 13, 2008, Jason Pflaum had a telephone conversation with an employee at Fairchild Semiconductor International (the "Fairchild Source"), a public company that trades over the New York Stock Exchange ("NYSE"), for the purpose of obtaining material, nonpublic information about Fairchild;

d. On or about July 14, 2008, BARAI caused the purchase of approximately 95,000 shares of Fairchild stock using a prime broker located in New York, New York;

e. On or about November 20, 2010, BARAI sent Blackberry Messenger ("BBM") communications to Pflaum directing Pflaum to destroy documentary and digital records after reading articles about a federal grand jury investigation into insider trading and the alleged role of an "expert networking" firm in such criminal activity; and

f. On or about November 20, 2010, LONGUEUIL destroyed a flash drive and external hard drives after reading an article about a federal grand jury investigation into insider trading and the alleged role of an "expert networking" firm in such criminal activity.

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

COUNTS TWO THROUGH FOUR

(Securities Fraud)

5. On or about the dates set forth below, in the Southern District of New York and elsewhere, SAMIR BARAI, a/k/a "Sam," the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of 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, BARAI caused a hedge fund located in New

York, New York ("Hedge Fund B") to execute the securities transactions listed below based on material, nonpublic information BARAI obtained from co-conspirators:

COUNT	DATE	SECURITY	TRANSACTION
TWO	May 23, 2008	Marvell Technology Group, Ltd. (MRVL)	purchased 118,400 shares
THREE	May 29, 2008	Marvell Technology Group, Ltd. (MRVL)	purchased 100,000 shares
FOUR	July 14, 2008	Fairchild Semiconductor International (FCS)	purchased 95,000 shares

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

COUNT FIVE

(Obstruction of Justice)

6. In or about November 2010, in the Southern District of New York and elsewhere, SAMIR BARAI, a/k/a "Sam," the defendant, unlawfully, willfully and knowingly, corruptly altered, destroyed, mutilated, and concealed a record, document, and other object, and attempted to do so, with the intent to impair the object's integrity and availability for use in an official proceeding, and otherwise obstructed, influenced, and impeded an official proceeding, and attempted to do so, to wit, BARAI destroyed and attempted to destroy documents and digital records after reading articles about a federal grand jury investigation concerning insider trading.

(Title 18, United States Code, Sections 1512(c) and 2.)

COUNT SIX

(Obstruction of Justice)

7. In or about November 2010, in the Southern District of New York and elsewhere, DONALD LONGUEUIL, the defendant, unlawfully, willfully and knowingly, corruptly altered, destroyed, mutilated, and concealed a record, document, and other object, and attempted to do so, with the intent to impair the object's integrity and availability for use in an official proceeding, and otherwise obstructed, influenced, and impeded an official proceeding, and attempted to do so, to wit,

LONGUEUIL destroyed a flash drive and external hard drives after reading an article about a federal grand jury investigation concerning insider trading.

(Title 18, United States Code, Sections 1512(c) and 2.)

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

8. I have been a Special Agent with the FBI for approximately six 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 individuals for participating in such offenses.

9. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (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, documents, and other evidence provided by Pflaum; (f) conversations with other FBI agents and my review of reports prepared by other FBI agents; (g) computer files, documents, audio recordings, and other evidence seized in connection with court-authorized searches of Hedge Fund B;² (h) court-authorized wiretaps on a cellular telephone used by Mark Anthony Longoria (the "Longoria Cellphone"), over which certain wire communications were intercepted; and (i) recordings of telephone conversations and meetings between Freeman and various co-conspirators, which were consensually-recorded by Freeman at the direction of the FBI. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the

² On or about November 12, 2010, another FBI agent obtained court authorization from a United States Magistrate Judge in the Southern District of New York to seize and search, among other things, a laptop computer used by Pflaum, certain files on Pflaum's desktop computer at Hedge Fund B, and a digital audio recorder (the "Digital Recorder") that SAMIR BARAI, a/k/a "Sam," the defendant, used to record consensual telephone conversations with Winifred Jiau, among other individuals.

course of my investigation. Where the contents of documents and the actions and statements of and conversations with others are reported herein, they are reported in substance and in part. Where figures, calculations, and dates are set forth herein, they are approximate.

Overview of the Scheme

10. As described in further detail below, there is probable cause to believe that, between in or about 2006 and in or about 2010, SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, along with Pflaum, Freeman, and others known and unknown, engaged in a scheme to commit securities fraud and wire fraud. In that scheme, the defendants and their co-conspirators, known and unknown, obtained Inside Information regarding numerous public companies that had been disclosed or misappropriated by others in violation of duties of trust and confidence, and then executed securities transactions at their respective hedge funds based on such Inside Information and for the benefit of the hedge funds at which each worked, generating millions of dollars of profits. The defendants and their co-conspirators obtained Inside Information from employees who worked at public companies as well as from independent research consultants who communicated with employees at public companies. Often, the defendants and their co-conspirators used an "expert networking" firm (the "Firm") to communicate with and pay the employees of the public companies. In addition, although they worked at different hedge funds, BARAI, LONGUEUIL, and Freeman shared the Inside Information each learned with each other.

11. As part of the scheme, the defendants and their co-conspirators undertook efforts to conceal the scheme from regulatory and law enforcement agencies, including by saving any electronic records evidencing their communications with company insiders on external flash drives or external hard drives, rather than on hedge fund servers, and using personal e-mail accounts rather than the hedge fund e-mail accounts to communicate about Inside Information. In fact, on or about November 19, 2010, after reading in the press that the FBI and a federal grand jury had been conducting an investigation into insider trading through the Firm, SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, each attempted to destroy digital records and/or documents reflecting their receipt of Inside Information from employees at public companies and their sharing of Inside Information with each other and Freeman.

Relevant Individuals

12. Based on my review of documents obtained from public sources, my and other FBI agents' conversations with cooperating witnesses, and my review of documents obtained from the Firm and various of the entities identified below, I have learned the following:

a. At all times relevant to this Complaint, SAMIR BARAI, a/k/a "Sam," the defendant, worked as a portfolio manager in the hedge fund industry. From in or about April 2005 until in or about early 2008, BARAI was a portfolio manager at a hedge fund located in New York, New York ("Hedge Fund A"). BARAI had primary investment discretion over more than \$200 million at Hedge Fund A. Once Hedge Fund A shut down in early 2008, BARAI founded Hedge Fund B, also located in New York, New York, where BARAI served as the principal portfolio manager. At various times relevant to this Complaint, Hedge Fund B had approximately \$100 million or more in assets under management. While at both hedge funds, BARAI obtained material, nonpublic information provided to him in breach of fiduciary and other duties of trust and confidence.

b. At all times relevant to this Complaint, DONALD LONGUEUIL, the defendant, worked in the hedge fund industry. From in or about June 2004 until in or about June 2008, LONGUEUIL was a research analyst and managing director at a hedge fund located in Connecticut ("Hedge Fund C"). In or about June 2008, LONGUEUIL left Hedge Fund C to work as a portfolio manager at another hedge fund ("Hedge Fund D"), where he had primary investment discretion over as much as \$300 million. LONGUEUIL no longer is employed at Hedge Fund D. At both hedge funds, LONGUEUIL specialized in research and trading in the technology and semiconductor sectors. While at both hedge funds, LONGUEUIL obtained material, nonpublic information provided to him in breach of fiduciary and other duties of trust and confidence.

c. At all times relevant to this Complaint, Jason Pflaum was a research analyst who worked directly with BARAI at Hedge Fund B and obtained Inside Information in breach of fiduciary and other duties of trust and confidence for the benefit of Hedge Fund B. Pflaum has entered a guilty plea pursuant to a cooperation agreement with the Government to charges of conspiracy and securities fraud in connection with this conduct. Pflaum has been cooperating with the Government in the hope of receiving a reduced sentence. Information Pflaum has provided has proven to be reliable and has been corroborated by,

among other things, the statements of other cooperating witnesses, consensually recorded telephone calls and court-authorized interceptions of telephone calls, telephone records, trading records, and documents provided by Pflaum, such as e-mails and BBM communications.

d. At all times relevant to this Complaint, Noah Freeman worked in the hedge fund industry, first as a research analyst at a hedge fund located in Boston, Massachusetts ("Hedge Fund E"), and subsequently as a portfolio manager at a Connecticut-based hedge fund ("Hedge Fund F"). Freeman specialized in research and trading in the technology and semiconductor sectors. While at both hedge funds, Freeman obtained material, nonpublic information provided to him in breach of fiduciary and other duties of trust and confidence and caused securities transactions to be executed for the benefit of Hedge Fund E and Hedge Fund F based, in whole or in part, on the Inside Information. Freeman has entered a guilty plea pursuant to a cooperation agreement with the Government to charges of conspiracy and securities fraud in connection with this conduct. Freeman has been cooperating with the Government in the hope of receiving a reduced sentence. Information Freeman has provided has proven to be reliable and has been corroborated by, among other things, the statements of other cooperating witnesses, consensually recorded telephone calls, telephone records, trading records, and documents provided by Freeman.

e. At all times relevant to this Complaint, CC-1 and CC-2 were research analysts who worked for BARAI at Hedge Fund A and obtained material, nonpublic information in breach of fiduciary and other duties of trust and confidence for the benefit of Hedge Fund A.

f. At all times relevant to this Complaint, Winifred Jiau was paid by the Firm for consultations she provided to SAMIR BARAI, a/k/a "Sam," the defendant, and Freeman. During those consultations, Jiau provided material, nonpublic information about Marvell, NVIDIA Corporation ("NVIDIA"), and at least one other company to BARAI and Freeman.

g. At all times relevant to this Complaint, a co-conspirator not named as a defendant herein was an employee at Fairchild (the "Fairchild Source") and was also paid by the Firm for consultations with BARAI and Freeman. Documents subpoenaed from the Firm describe the Fairchild Source as "a Product Manager at Fairchild." The Fairchild Source provided material, nonpublic information about Fairchild to individuals working at hedge funds.

h. At all times relevant to this Complaint, Mark Anthony Longoria, a/k/a "Tony Longoria," was employed by Advanced Micro Devices, Inc. ("AMD") as a Supply Chain Manager in Round Rock, Texas. Longoria worked as a consultant at the Firm, and provided material, nonpublic information about AMD to individuals working at hedge funds.³

i. At all times relevant to this Complaint, a co-conspirator not named as a defendant herein was an employee in sales and distribution at Actel Corporation (the "Actel Source"), and at times also worked as a consultant for the Firm and/or other "expert networking" firms. Documents subpoenaed from the Firm describe the Actel Source as "a Sr. Manager with a leading global Semiconductor Manufacturer in the FPGA space" whose "responsibilities include global Management of Sales, Channel Sales, and Sales Operations." The Actel Source provided material, nonpublic information about Actel to individuals working at hedge funds.

Relevant Entities

13. Based on my review of documents obtained from public sources, my and other FBI agents' conversations with cooperating witnesses, and my review of documents obtained from the entities identified below, I have learned the following:

a. At all times relevant to this Complaint, the Firm operated as an "expert networking" firm and maintained a main office in Mountain View, California, and additional offices in New York, New York, and San Francisco, California. The Firm advertised itself as an "independent investment research firm that provides institutional money managers and analysts with market intelligence" through a "Global Advisory Team of Experts." The Firm provided its clients with access to its network of consultants using subscription-based or transaction-based fees. Consultants earned hundreds of dollars per hour or per call from the Firm for their consultations with Firm clients, and Firm clients often paid the Firm tens of thousands of dollars annually for access to the Firm's consultant network and services. In addition to receiving payments for its services in traditional

³ Longoria was arrested on or about December 16, 2010, based on a complaint (*United States v. Shimon et al.*, 10 Mag. 2823 (S.D.N.Y.)) that charges him with conspiracy to commit securities fraud, conspiracy to commit wire fraud, and wire fraud, in violation of Title 18, United States Code, Sections 371, 1343, and 1349.

"hard dollars" (such as payments made in cash or by check), sometimes the Firm entered into arrangements with its clients so that it received payments for its services in "soft dollars," which can be generated by trading activity.

b. At all times relevant to this Complaint, Marvell was a technology company headquartered in Santa Clara, California, and listed on the NASDAQ (ticker symbol: MRVL). Furthermore, at all times relevant to this Complaint, Marvell's policies prohibited the unauthorized disclosure of Marvell's confidential information.

c. At all times relevant to this Complaint, Fairchild was a semiconductor company headquartered in South Portland, Maine, and listed on the NYSE (ticker symbol: FCS). Furthermore, from my review of documents produced by Fairchild, I have learned that, at all times relevant to this Complaint, Fairchild's policies prohibited the unauthorized disclosure of Fairchild's confidential information.

d. At all times relevant to this Complaint, AMD was a technology company headquartered in Sunnyvale, California, and listed on the NYSE (ticker symbol: AMD). Furthermore, at all times relevant to this Complaint, AMD's policies prohibited the unauthorized disclosure of AMD's confidential information. I have also learned that AMD's "Worldwide Standards of Business Conduct" applied to all AMD employees and specifically prohibited outside employment without prior approval.

e. At all times relevant to this Complaint, NVIDIA was a technology company headquartered in Santa Clara, California, and listed on the NASDAQ (ticker symbol: NVDA). Furthermore, at all times relevant to this Complaint, NVIDIA's policies prohibited the unauthorized disclosure of NVIDIA's confidential information.

f. At all times relevant to this Complaint, Actel Corporation ("Actel") was a semiconductor corporation that primarily manufactured FPGAs (field-programmable gate arrays), which are circuits that are designed to be configured by the customer after manufacturing. Actel was headquartered in Mountain View, California, and listed on the NASDAQ (ticker symbol: ACTL). In or about late 2010, Actel was acquired by Microsemi Corporation. At all times relevant to this Complaint, Actel's policies prohibited the unauthorized disclosure of Actel's confidential information.

g. At all times relevant to this Complaint, Cypress Semiconductor Corporation ("Cypress") was a semiconductor company headquartered in San Jose, California, and listed on the NASDAQ (ticker symbol: CY). Furthermore, at all times relevant to this Complaint, Cypress's policies prohibited the unauthorized disclosure of Cypress's confidential information.

The Insider Trading Scheme

14. From my conversations with Pflaum, I have learned the following:

a. In or about March 2008, Pflaum began working at Hedge Fund B as a research analyst. Thereafter, SAMIR BARAI, a/k/a "Sam," the defendant, instructed Pflaum to speak to various co-conspirators, including Mark Anthony Longoria, the Fairchild Source, and the Actel Source, in order to obtain Inside Information regarding public companies, for the purpose of making trading decisions. Many of the sources of information to whom BARAI instructed Pflaum to speak worked at public companies and were paid through the Firm. Pflaum followed BARAI's instructions and obtained Inside Information regarding AMD, Fairchild, Actel, Cypress, and numerous other technology companies, for the benefit of Hedge Fund B.

b. After obtaining the Inside Information, Pflaum provided the Inside Information to BARAI for the purpose of executing securities transactions. BARAI, who was the sole portfolio manager at Hedge Fund B, had primary discretion to effect securities transactions at Hedge Fund B.

c. Based on the e-mails provided by BARAI and Pflaum's conversations with CC-1, Pflaum understood that BARAI previously had obtained Inside Information from employees at public companies during the time period that BARAI was a portfolio manager at Hedge Fund A.

15. From my conversations with Freeman, I have learned the following:

a. Freeman maintained a network of sources who provided Freeman with Inside Information regarding public companies. Many of the sources were employed at public companies and provided Inside Information to Freeman in breach of fiduciary and other duties of trust and confidence. Several of the inside sources were found through the Firm, which offered the sources as "consultants." In addition, Freeman also obtained Inside Information from independent research consultants who had

obtained Inside Information from employees at public companies. Through these means, Freeman obtained Inside Information about numerous public companies, including Marvell, NVIDIA, Fairchild, and Actel.

b. Freeman also received Inside Information from SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants. Specifically, Freeman understood that BARAI and LONGUEUIL had their own network of sources, many of whom were employed at public companies, who provided Inside Information to BARAI and LONGUEUIL in breach of fiduciary and other duties of trust and confidence. Freeman understood that these sources provided such Inside Information in exchange for payments and/or other consideration. BARAI, LONGUEUIL, and Freeman had regular conference calls during which Freeman shared the Inside Information Freeman obtained with BARAI and LONGUEUIL, and in exchange, BARAI and LONGUEUIL were expected to, and did, share the Inside Information they obtained with Freeman. These lengthy conference calls occurred as the quarterly reporting season for technology companies approached. Indeed, throughout each quarter, LONGUEUIL and Freeman had regular and frequent contact, even apart from the conference calls with BARAI, to share Inside Information. Both LONGUEUIL and Freeman kept a running "log" of the information they obtained from sources on a flash drive each maintained. Freeman relied on the Inside Information provided by BARAI and LONGUEUIL to execute securities transactions at Hedge Fund E and Hedge Fund F.

16. On or about December 20, 2010, Freeman, at the direction of the FBI, consensually recorded a meeting with DONALD LONGUEUIL, the defendant. From my conversations with Freeman and my review of the recording of that meeting, I have learned that at the meeting, LONGUEUIL and Freeman discussed their prior involvement in insider trading. Among other things, LONGUEUIL acknowledged that he and his research analyst received information regarding revenues from employees at public companies in advance of the quarterly earnings announcements, and that LONGUEUIL and his research analyst spoke to many employees at public companies. LONGUEUIL explained that his research analyst "would tell me what the guy [referring to the public company employee] said," that LONGUEUIL knew his research analyst's sources identity by name, and that LONGUEUIL tracked the information provided by the public company employees. Freeman understood that LONGUEUIL obtained such Inside Information in exchange for personal benefits provided by LONGUEUIL. LONGUEUIL further stated that while he would not get the full "P&L" for the company (with the exception of information provided by "Wini," discussed below), certain public company employees provided "top-

line" revenue numbers that, while not always on point, were "directionally right." LONGUEUIL provided the following example as an explanation: "[w]e talk to an Intel sales guy, he's like 'our revenues [are] supposed to be 500, then you short the shit out of it. . . . and it goes down 10 percent.'" Thus, the hedge fund still profited from the short position because the information, which came from an insider at Intel, was "directionally right," as LONGUEUIL acknowledged.

**Trading in Marvell and NVIDIA Based on
Inside Information Obtained From Winifred Jiau**

17. From my conversations with Pflaum and Freeman, my review of audio recordings made at the direction of SAMIR BARAI, a/k/a "Sam," the defendant, and obtained through a court-authorized search warrant,⁴ my review of trading records, and my review of toll records, I have learned that SAMIR BARAI, a/k/a "Sam," and DONALD LONGUEUIL, the defendants, received Inside Information regarding Marvell's quarterly revenue announcement and that Hedge Fund B and Hedge Fund C thereafter executed trades in Marvell based, in whole or in part, on such Inside Information.

18. From my conversations with Pflaum, I have learned the following:

a. One of the individuals who SAMIR BARAI, a/k/a "Sam," the defendant, maintained within his network of sources of Inside Information was "Wini," whose last name Pflaum did not know.⁵ BARAI paid Jiau through the Firm, and Pflaum understood that Jiau was maintained on the Firm's "private" network, meaning the Firm did not make Jiau available for consultation with other Firm clients.

⁴ From my conversations with Pflaum, I have learned that on occasion SAMIR BARAI, a/k/a "Sam," the defendant, caused his conversations with co-conspirators to be audio recorded on the Digital Recorder so that BARAI and Pflaum could later listen to the conversation again.

⁵ Based on my knowledge of the investigation, conversations with Freeman, and the audio recordings described below, which I have reviewed, I believe that Pflaum's reference to "Wini" is a reference to Winifred Jiau.

b. BARAI communicated directly with Jiau by telephone. Often, BARAI and Freeman called Jiau together and spoke to Jiau at the same time. From time to time, Pflaum listened to the calls at BARAI's direction, and BARAI occasionally had the phone calls recorded with the Digital Recorder. Pflaum occasionally made contemporaneous notes of the conversations.

c. Pflaum heard conversations among BARAI, Freeman, and Jiau, during which Jiau provided Marvell Inside Information to BARAI and Freeman, including detailed earnings, gross margins, and other confidential information of Marvell prior to Marvell's public earnings announcements for the first and second fiscal quarters of 2008. In those same conversations and others, Jiau also provided BARAI and Freeman with NVIDIA Inside Information, including detailed earnings results for NVIDIA prior to NVIDIA's public earnings announcements for the second fiscal quarter of 2008.

d. After obtaining the information from Jiau, BARAI executed securities transactions in Marvell and NVIDIA based, in whole or in part, on the Inside Information Jiau provided.

e. Pflaum understood at the time that the information provided by Jiau was Inside Information.

19. From my conversations with Freeman, I have learned the following:

a. One of the co-conspirators from whom Freeman obtained Inside Information was Winifred Jiau. Freeman first met Jiau in or about 2006. Thereafter, Jiau periodically provided SAMIR BARAI, a/k/a "Sam," the defendant, and Freeman with Inside Information about, among other companies, Marvell and NVIDIA. Often, BARAI and Freeman had conference calls with Jiau and received Inside Information from Jiau at the same time. BARAI and Freeman then made trading decisions at their respective hedge funds based on that Inside Information.

b. Jiau informed Freeman that Jiau had sources within Marvell and NVIDIA. When Freeman discussed payments to Jiau for her Inside Information, Jiau informed Freeman that BARAI and Freeman needed to pay her more money because she needed to make a profit after paying her sources for their information. Freeman understood that Jiau's sources of information at Marvell and NVIDIA were not authorized to disclose the information to Jiau for dissemination to BARAI and Freeman.

c. The Inside Information that Jiau provided to BARAI and Freeman included detailed earnings, gross margins, and other confidential information regarding Marvell, as well as detailed earnings and gross margins for NVIDIA. Such information was provided prior to Marvell's and NVIDIA's announcements of their quarterly financial results. Jiau provided Inside Information regarding Marvell and NVIDIA quarterly earnings since in or about late 2006. Freeman shared the Inside Information provided by Jiau with DONALD LONGUEUIL, the defendant.

d. BARAI and Freeman paid Jiau through the Firm. Jiau was maintained on the Firm's "private" network, meaning that Jiau was not available to the Firm's other clients; rather, Jiau was reserved to consult solely for BARAI and Freeman.

20. From my review of documents provided by the Firm, I have learned that, between in or about September 2006 and in or about December 2008, the Firm paid Jiau approximately \$10,000 per month, for a total of approximately \$208,000, as payment for services provided to hedge funds at which BARAI and Freeman were employed.

Marvell's Q1 2008 Financial Results

21. From my conversations with Pflaum and Freeman, and my review of audio recordings on the Digital Recorder, documents retrieved from Pflaum's laptop and desktop computers, telephone toll records, trading records, records provided by the Firm, and information available to the public over the Internet, I have learned that SAMIR BARAI, a/k/a "Sam," the defendant, received Inside Information regarding Marvell's first quarter 2008 financial results from Winifred Jiau and that he executed securities transactions based on such Inside Information. Specifically, I have learned the following:

a. In or about late May 2008, BARAI, Freeman, and Jiau had at least two telephone conversations to discuss Marvell's quarterly earnings announcement scheduled for May 29, 2008. At BARAI's request, Pflaum participated in those two telephone conversations. During those telephone conversations, Pflaum made contemporaneous notes about the conversations on Pflaum's computer. Both calls occurred before Marvell announced its financial results for the quarter. According to Pflaum and Pflaum's contemporaneous notes, in the first conversation, which occurred approximately one or two weeks prior to the quarterly announcement, Jiau informed BARAI and Freeman that Marvell's revenues for the quarter would be approximately \$805 million and that its gross margins would be 53%. In a subsequent

conversation shortly before the quarterly announcement, Jiau told BARAI and Freeman that the quarterly revenues came in at \$804 million, and that Marvell's gross margins would be approximately 51.6%. Jiau further told BARAI and Freeman that Marvell's GAAP [referring to Generally Accepted Accounting Principles] earnings per share ("EPS") would be 11 cents per share.

b. From my review of toll records, I have learned that, on or about May 23, 2008, at 2:17 p.m., there was a 43.6 minute telephone call from a telephone number registered to Hedge Fund B (the "Hedge Fund B Telephone") to a telephone subscribed to by Jiau (the "Jiau Telephone"), and another 20.5 minute call from the Hedge Fund B Telephone to the Jiau Telephone on or about May 28, 2008, at 11:19 a.m.

c. From my review of publicly available documents, I have learned that, on or about May 29, 2008, Marvell announced its financial results for the quarter ending on May 3, 2008. The company announced net revenues of \$804 million, reported net income under GAAP of \$69.9 million, or 11 cents per share (diluted), and non-GAAP gross margins of 52%. On the following day, shares of Marvell closed trading at \$17.36 per share, up approximately \$3.28, or approximately 23.3% over the previous day's close.

d. From my review of trading records, I have learned that on or about May 21, 2008, Hedge Fund B sold short approximately 25,000 shares of Marvell at a price of approximately \$14.21, which Marvell then covered on May 23, 2008, at a price of approximately \$14.36.⁶ Then, between May 23, 2008 and May 29, 2008, Hedge Fund B purchased over 300,000 shares of Marvell (worth approximately \$4.4 million) at prices ranging from \$13.98 to \$14.41 per share, including approximately 118,400 shares on or about May 23, 2008 and approximately 100,000 shares on or about May 29, 2008. Hedge Fund B then sold its entire position in Marvell between May 29, 2008 and June 11, 2008, at prices ranging from \$15.15 to \$17.15 per share. Also on May 29, 2008, Hedge Fund B purchased 100 Marvell June call options with a strike price of \$15, which it sold the following day. As a result of this trading activity, Hedge Fund B both avoided losses

⁶ In a short sale of stock, an individual sells securities that have been borrowed from a third party with the intention of buying the securities back at a later date in hopes of profiting from a decline in the price of the securities. Conversely, if the price of the securities rise, the short seller will incur a loss.

by covering its short position and earned net profits of over \$820,000 from its trading in Marvell stock and stock options between May 23, 2008 and June 11, 2008.

22. From my conversations with Freeman, my review of a recording of a meeting between Freeman and DONALD LONGUEUIL, the defendant, my review of trading records for Hedge Fund C, and my review of toll records, I have learned that LONGUEUIL received the Inside Information regarding Marvell's first quarter 2008 financial results that SAMIR BARAI, a/k/a "Sam," the defendant, and Freeman received from Winifred Jiau, and that, after receipt of the Inside Information, Hedge Fund C executed securities transactions in Marvell stock based on such Inside Information. Specifically, I have learned the following:

a. Freeman has informed me that, in or about late May 2008, after Freeman and BARAI received Inside Information from Jiau regarding Marvell's May 29, 2008 earnings announcement, Freeman advised LONGUEUIL of the Inside Information he learned from Jiau, including the detailed revenues, gross margins, and EPS that Marvell would announce for the quarter. LONGUEUIL was informed that the information had come from "Wini," as Freeman and LONGUEUIL previously had discussed "Wini" and used the name "Wini" to refer to Winifred Jiau.

b. Based on my review of trading records for Hedge Fund C, I have learned that, starting in early April 2008, Hedge Fund C maintained a substantial short position in Marvell, which Hedge Fund C covered and closed out by May 13, 2008. Between May 13 and May 27, 2008, Hedge Fund C was not trading in Marvell. Then, on or about May 28, 2008, Hedge Fund C purchased approximately 400,000 shares of Marvell, at a price of approximately \$14.08 per share, and then purchased another 400,500 shares in Marvell on May 29, 2008, prior to Marvell's earnings announcement, at a price of approximately \$14.06. Given the 23.3% jump in the value of Marvell the day after the quarterly announcement, Hedge Fund C's holdings in Marvell stock on May 30, 2008 created an unrealized profit to Hedge Fund C of approximately \$2.6 million. After the quarterly announcement, Hedge Fund C began to sell its position in Marvell, and continued to sell its position until approximately July 17, 2008. In total, Hedge Fund C netted a profit of approximately \$1.08 million from its trading in Marvell stock around the May 29, 2008 earnings announcement.

c. As stated above, on or about December 20, 2010, Freeman, at the direction of the FBI, consensually recorded a meeting with LONGUEUIL, during which they discussed trading of

Marvell stock by LONGUEUIL, BARAI, and Freeman based on the Inside Information provided by Jiau. Based on my conversation with Freeman and my review of the recording of the December 20 meeting, I have learned the following:

(i) During their conversation, LONGUEUIL and Freeman discussed a November 19, 2010 news article that reported about an FBI investigation of insider trading (described in further detail below). Freeman asked LONGUEUIL "what do you think, worst case, they could get us in trouble for?" LONGUEUIL and Freeman discussed their liability for getting "P&L" (profit and loss) information from "Wini," referring to Winifred Jiau. Freeman stated, "I got it from Wini. I gave it to you. So we both, I guess in theory, there's that. Did you trade on the Wini P&L? We both did, didn't we?" LONGUEUIL responded, "Yeah." Freeman then stated that "the Wini thing, that was detailed. That was fucking detailed. I would give that, I gave that to you." LONGUEUIL responded, "that was 08 . . . the first half of 08." Freeman then remarked, "so, I traded on that. You, you said you traded on that. Sam [BARAI] sure as hell traded on that." In response, LONGUEUIL indicated his agreement.

(ii) Subsequently in the conversation, Freeman again asked, "so let's take the worst case scenario, which is like where you had full P&L, right? . . . so, what, how many of those -- we had Wini?" LONGUEUIL responded, "That's all I had." Freeman then remarked, "and I -- we all traded on it?" to which LONGUEUIL indicated his agreement. Freeman then stated, "And, Wini also gave me Marvell," at which point LONGUEUIL interrupted Freeman, remarking, "That's all, that's it, that's the one I'm talking about. I only remember that one Marvell." Freeman asked LONGUEUIL whether he recalled what information Jiau had provided about Marvell and whether she provided a "full P&L", to which LONGUEUIL responded, "I don't remember the numbers" but "I remember like revenue, EPS [earnings per share]." Freeman then asked, "did we trade on it," to which LONGUEUIL indicated they had.

(iii) Later in the conversation, Freeman asked LONGUEUIL whether it "could be a problem if they [the FBI] get Wini [meaning, arrest Jiau and she cooperates]." LONGUEUIL responded, "I guess, but do, do they have proof that she gave it to us? . . . I mean, I can tell you whatever you fucking want to hear, or don't want to. I mean I can tell you whatever you want. I can lie whatever. . . . So, yeah, yeah, we talked to Wini. . . . It's he said, she said." Freeman responded, "He said, she said. So, if . . . she says I gave them the fucking EPS number

and then we say --" at which point LONGUEUIL interrupted, "where's the proof? . . . I don't remember [U/I] like that."

**Trading in Fairchild Based on Inside
Information Obtained from The Fairchild Source**

23. From my conversations with Pflaum and Freeman, and my review of documents provided by Pflaum, telephone toll records, trading records, records provided by the Firm, and information available to the public over the Internet, I have learned that SAMIR BARAI, a/k/a "Sam," the defendant, received Inside Information regarding Fairchild from the Fairchild Source and that BARAI executed securities transactions at Hedge Fund A and Hedge Fund B based on such Inside Information.

24. From my conversations with Pflaum and Freeman, my review of trading records and toll records, and my review of certain documents on Pflaum's laptop computer, I have learned that SAMIR BARAI, a/k/a "Sam," the defendant, obtained Inside Information from the Fairchild Source while BARAI worked at both Hedge Fund A and Hedge Fund B. BARAI also caused securities transactions of Fairchild to be executed based, in part, on Inside Information obtained from the Fairchild Source. Specifically, from my conversations with Pflaum, and my review of documents provided by Pflaum and publicly available documents, I have learned the following:

a. One of the inside sources whom BARAI directed Pflaum to communicate with was the Fairchild Source. Pflaum learned that the Fairchild Source had previously provided BARAI with Inside Information regarding Fairchild's financial results and other material business developments while BARAI worked at Hedge Fund A, and that BARAI's research analysts, CC-1 and CC-2, spoke to the Fairchild Source.

b. BARAI forwarded to Pflaum copies of e-mails that CC-1 and CC-2 had sent to BARAI, from in or about 2006 through in or about 2007, while BARAI was a portfolio manager at Hedge Fund A. Those e-mails and the attachments thereto detailed the information that the Fairchild Source provided to CC-1 and CC-2 on various dates between in or about September 2006 and in or about April 2007, including detailed information regarding Fairchild's bookings, billings, revenues, and gross margins, among other information. Some of the e-mails contain the monthly bookings and billings for Fairchild's largest customers. For example, the attachment to one such e-mail includes CC-1's typewritten notes summarizing CC-1's conversation with the Fairchild Source on January 23, 2007 -- two days before

Fairchild's public earnings announcement -- during which the Fairchild Source advised CC-1 that "Q4 billings" would be approximately "\$419-420m" [meaning, \$419 to \$420 million], and that this is "flat/up from Q3" and "up 12% y/y" [meaning, up 12% year over year]. Based on my review of Fairchild's earnings announcement on or about January 25, 2007, I have learned that the information provided by the Fairchild Source on January 23, 2007 was substantially accurate.⁷

c. While employed at Hedge Fund B, Pflaum regularly spoke to the Fairchild Source. During those conversations, the Fairchild Source provided Pflaum with Inside Information regarding, among other things, Fairchild's revenues, bookings, billings, inventory levels, cancellations, backlog levels, as well as lead times to fulfill orders, and the monthly bookings and billings for many of Fairchild's largest customers. The Fairchild Source provided such information to Pflaum nearly every month from in or about mid-2008 through in or about 2009. Pflaum made detailed and contemporaneous notes of Pflaum's conversations with the Fairchild Source and the information provided by the Fairchild Source, which Pflaum knew was material, nonpublic information that Hedge Fund B could not use to execute trading decisions. Pflaum nevertheless provided the Inside Information he received from the Fairchild Source to BARAI in order to make trading decisions. When so doing, Pflaum informed BARAI, in sum and substance, that Pflaum received the Inside Information from the Fairchild Source.

d. Based on Pflaum's conversations with BARAI, Pflaum understood that Hedge Fund B executed securities transactions in Fairchild based, in part, on the Inside Information Pflaum received from the Fairchild Source.

25. From my conversations with Freeman and my review of documents provided by the Firm, I have learned that Freeman also regularly spoke to the Fairchild Source and received from the Fairchild Source detailed monthly bookings, billings, inventory levels, lead times, and other Fairchild information. In exchange for the Inside Information provided by the Fairchild Source, Freeman caused the Fairchild Source to be paid through the Firm. Based in part on the Inside Information provided by the Fairchild Source, Freeman caused Hedge Fund E and Hedge Fund

⁷ In its January 25, 2007 earnings announcement, Fairchild announced total "fourth quarter sales of \$418.3 million, flat from the prior quarter and 13% higher than the fourth quarter of 2005."

F to execute securities transactions in Fairchild. Freeman shared the Inside Information received from the Fairchild Source with DONALD LONGUEUIL, the defendant.

26. From my conversations with Pflaum, my review of toll records, and my review of Pflaum's typewritten notes, I have learned that, on or about July 13, 2008, Pflaum had two telephone conversations with the Fairchild Source, lasting a total of approximately 19 minutes, during which the Fairchild Source advised Pflaum of Inside Information regarding Fairchild's earnings for the second quarter of 2008. Pflaum's notes reflect that Pflaum learned from the Fairchild Source that the billings for the second quarter would be \$419 million. It was Pflaum's practice to advise SAMIR BARAI, a/k/a "Sam," the defendant, of the Inside Information provided by the Fairchild Source.

27. I have confirmed with a representative of Fairchild, who has reviewed portions of Pflaum's notes regarding the information provided by the Fairchild Source, that the information provided by the Fairchild Source regarding the second quarter of 2008 was confidential and accurate, and that the Fairchild Source had access to the information as a result of his/her position at Fairchild. Fairchild has confirmed that the information the Fairchild Source provided was highly sensitive information; indeed, certain of the information provided by the Fairchild Source (e.g., the specific customer's billings and bookings) is so sensitive that it is not made public as part of Fairchild's quarterly earnings announcements.

28. From my review of publicly available documents, I have learned that, on or about July 17, 2008, before the market opened, Fairchild announced its financial results for the second quarter of 2008. Among other things, the company announced second quarter sales of \$418.7 million, which beat most analysts' expectations for the company. Shares of Fairchild closed trading on July 17, 2008 at \$12.50 per share, up approximately 72 cents over the previous day's close.

29. From my review of trading records, I have learned that on or about July 14, 2008, Hedge Fund B purchased approximately 95,000 shares of Fairchild, and another approximately 50,000 shares on July 16, 2008, at prices ranging from \$11.02 to \$11.62 per share. Immediately prior to July 14, Hedge Fund B owned approximately 59,062 shares of Fairchild and never owned more than 74,100 shares in Fairchild at a time. Between July 17, 2008 and July 21, 2008, following the release of Fairchild's second quarter 2008 financial report, Hedge Fund B sold approximately 166,240 shares in Fairchild at prices ranging

from \$12.11 to \$12.71 per share. As a result, Hedge Fund B earned trading profits of approximately \$209,265 based, in part, on Inside Information received from the Fairchild Source.⁸

30. Based on my review of documents provided by the Firm, I have learned that between in or about October 2006 and in or about October 2009, the Fairchild Source was paid approximately \$48,000 by the hedge funds at which SAMIR BARAI, the defendant, and Freeman worked.

**Insider Trading in the Securities of
NVIDIA, Marvell, AMD, Actel, and Cypress**

31. From my conversations with Pflaum and Freeman, and my review of court-authorized wiretaps over the Longoria Cellphone, consensually recorded telephone calls with Winifred Jiau, trading records, toll records, and documents maintained by Pflaum on Pflaum's laptop and computer, I believe that SAMIR BARAI, a/k/a "Sam," the defendant, has obtained Inside Information regarding numerous technology companies, and has engaged in securities transactions based, in whole or in part, on the Inside Information BARAI has obtained about those companies. Specifically, I believe that BARAI has engaged in securities transactions in the following public companies based, in part, on the following Inside Information:

a. NVIDIA, based on Inside Information BARAI obtained from Winifred Jiau in connection with NVIDIA's announcement on August 12, 2008 of its financial results for the quarter ending on or about July 27, 2008;

b. Marvell, based on Inside Information BARAI obtained from Winifred Jiau in connection with Marvell's

⁸ In addition, based on my review of toll records, records provided by the Firm, and documents provided by Pflaum (described in Paragraph 24(b) above), I have learned that the Fairchild Source consulted for BARAI from at least in or about October 2006 through in or about approximately September 2007, while BARAI was employed at Hedge Fund A, and that the Fairchild Source provided BARAI (through CC-1 and CC-2) Inside Information regarding Fairchild during that time period. Based on my review of Hedge Fund A's trading records, I have learned that, from approximately October 2006 through approximately September 2007, Hedge Fund A earned net profits of over approximately \$450,000 as a result of its trading activity in Fairchild.

announcement on August 28, 2008 of its financial results for the quarter ending on or about August 2, 2008;

c. AMD, based on Inside Information provided by Mark Anthony Longoria, from in or about July 2008 through in or about November 2009, in connection with AMD's quarterly earnings announcements;⁹

d. Actel Corporation ("Actel"), based on Inside Information provided by the Actel Source, in connection with Actel's announcement on July 29, 2008 of its financial results for the quarter ending on or about July 6, 2008;¹⁰

e. Cypress, based on Inside Information provided by an employee who worked at Cypress, in connection with Cypress's announcement on July 17, 2008 of its financial results for the quarter ending on or about June 29, 2008.

The Defendants' Efforts to Obstruct Justice

32. On or about November 19, 2010, the *Wall Street Journal* published an article titled, "U.S. in Vast Insider Trading Probe."¹¹ The article reported as follows, in part:

Federal authorities, capping a three-year investigation, are preparing insider-trading charges that could ensnare consultants, investment bankers, hedge-fund and mutual-fund traders, and

⁹ From my review of trading records, I have learned that, between on or about July 14, 2008 and on or about November 12, 2009 -- the time period during which Longoria was providing Pflaum Inside Information -- Hedge Fund B netted profits of approximately \$1.7 million from trading activity in AMD.

¹⁰ From my review of trading records and toll records, I have learned that, between June 2008 and October 2, 2008 -- the period during which Pflaum and the Actel Source had approximately 20 telephone calls -- Hedge Fund B earned net profits of approximately \$345,000 as a result surrounding Actel's July 29, 2008 announcement.

¹¹ The article was first published on the internet on November 19, 2010, and was published in the print edition of the *Wall Street Journal* the following day, on November 20, 2010.

analysts across the nation, according to people familiar with the matter.

The criminal and civil probes, which authorities say could eclipse the impact on the financial industry of any previous such investigation, are examining whether multiple insider-trading rings reaped illegal profits totaling tens of millions of dollars, the people say. Some charges could be brought before year-end, they say.

The investigations, if they bear fruit, have the potential to expose a culture of pervasive insider trading in U.S. financial markets, including new ways non-public information is passed to traders through experts tied to specific industries or companies, federal authorities say.

One focus of the criminal investigation is examining whether nonpublic information was passed along by independent analysts and consultants who work for companies that provide "expert network" services to hedge funds and mutual funds. These companies set up meetings and calls with current and former managers from hundreds of companies for traders seeking an investing edge.

Among the expert networks whose consultants are being examined, the people say, is [the Firm], a Mountain View, Calif., firm that connects experts with investors seeking information in the technology, health-care and other industries....

Independent analysts and research boutiques also are being examined....

The investigations have been conducted by federal prosecutors in New York, the FBI and the Securities and Exchange Commission....

Key parts of the probes are at a late stage. A federal grand jury in New York has heard evidence, say people familiar with the matter. But as with all investigations that aren't completed, it is unclear what specific charges, if any, might be brought.

33. Also on November 19, 2010, at approximately 11:07 p.m., Reuters published an article entitled, "U.S. to lift lid on 'pervasive insider trading', says WSJ." The article reported as follows, in relevant part:

U.S. officials are preparing insider trading charges against a host of financial players, including investment bankers and hedge fund managers, according to The Wall Street Journal, citing people familiar with the matter.

The charges could surpass any previous investigations on Wall Street, and examine whether certain players garnered tens of millions of dollars in illegal profits, according to the newspaper.

The investigations could expose "a culture of pervasive insider trading in U.S. financial markets", especially in ways private information is transmitted to traders through connected insiders, the newspaper said, citing federal authorities....

Two lawyers speaking to Reuters, who declined to be identified because they represent potential clients, said agents from the FBI had approached hedge fund traders over the past two weeks and a number of traders had contacted lawyers.

While the scope of the investigation is unclear it is said to focus on the use of so-called expert network firms, businesses that command big fees from hedge funds to match them up with experts in particular industries. There has been concern for years that some experts may be passing on confidential information about public companies to traders.

34. From my conversations with Pflaum, my review of BBM communications between Pflaum and SAMIR BARAI, a/k/a "Sam," the defendant, and my review of publicly available documents, I have learned that BARAI attempted to destroy incriminating evidence of his involvement in insider trading following the press reports on November 19, 2010 that the FBI had commenced a broad investigation into insider trading facilitated through the

Firm and other expert networking firms. Specifically, I have learned the following:¹²

a. Late in the night of November 19, 2010, after Pflaum had already begun to cooperate with the Government in its investigation, BARAI and Pflaum exchanged a series of BBM communications regarding the article published in the *Wall Street Journal*. In the BBM communications, BARAI stated that the article said that "key parts of the probes are at a late stage" and that a "Federal Grand Jury has heard evidence." BARAI further stated that he read the "article 10x [meaning, ten times]." BARAI then summarized the Reuters article quoted in Paragraph 49 above, which he had reviewed:¹³

- ▶ So another reuters article
- ▶ Says
- ▶ Last two weeks
- ▶ Fbi had approached HF [Hedge Fund] traders over past 2 weeks
- ▶ And number of traders contacted lawyers
- ▶ Problem is
- ▶ This scope is said to focus on the use of so-called expert network firms
- ▶ Concern for years that some experts may be passing on confi [meaning, confidential] info about public cos [meaning, companies] to traders
- ▶ [The Firm] was only one named!!!!
- ▶ Fuuuuuck

BARAI then concluded the BBM communication with the following instruction: "Delete ur bbm chatr" [meaning, that Pflaum should delete his BBM communications with BARAI].

b. The following morning, on November 20, 2010, BARAI and Pflaum continued their BBM communications from the prior night. Pflaum sent BARAI a BBM communication stating: "Yo. Deleted them. didn't sleep so well last night. What else do you

¹² My interpretation of certain terms that were used in the BBM communications, which are based on my training and experience and my familiarity with the investigation, are contained in brackets, or are otherwise noted.

¹³ Each of the bullet points in this and subsequent paragraphs quotes BBM communications from SAMIR BARAI, a/k/a "Sam," the defendant, to Pflaum.

think we need to do?" In response, BARAI sent Pflaum the following BBM communications:

- ▶ Didn't sleep much either
- ▶ I dunno
- ▶ I think we ok tho
- ▶ I think U just go into office
- ▶ Shred as much as u can
- ▶ Put all ur data files onto an encrypted drive
- . . .
- ▶ I think all your offline stuff is an issue .
- . . .
- ▶ I would delete all emails from [named two particular employees at the Firm] . . .
- ▶ I deleted mine.

c. In that same series of BBM communications, Pflaum asked BARAI "[w]ho else do we talk to there [at the Firm] that might be questionable? Haven't spoken to tony [referring to Longoria] in a long time". BARAI responded, "I would delete his notes [f]or sure." Pflaum responded, "I think already deleted them," to which BARAI remarked "Good."

d. In the BBM communications on November 20, 2010, BARAI wrote:

- ▶ So what if we talked to anyone
- ▶ They need proof that we acted on something
- ▶ And its hard to have that
- ▶ My sense is they tapped [the Firm] just recently . . .
- ▶ The more I think about it - just not enough clues to hold something on us
- ▶ There isn't anything tho
- ▶ Nothing material
- ▶ We use all mosaic theory
- ▶ So we're ok

Pflaum and BARAI then corresponded about Longoria, and BARAI wrote:

- ▶ Let's not worry
- ▶ No evidence we got exact info
- ▶ So it doesn't matter
- ▶ Forget the past
- ▶ No proof
- ▶ So ur fine
- ▶ Btw - we did mosaic threoy [sic]

► We always do

40. From my conversations with Pflaum and my review of BBM communications between Pflaum and SAMIR BARAI, a/k/a "Sam," the defendant, I have learned that, on or about November 21, 2010, BARAI instructed Pflaum to leave Pflaum's laptop computer with the doorman at Pflaum's apartment building for BARAI to pick up so that BARAI could "encrypt it [a]nd do a dept of defense delete . . . [s]o it cannot be undeleted."¹⁴ The laptop was used by Pflaum to, among other things, store records that reflected the receipt of Inside Information by Pflaum and BARAI. Pflaum did as instructed and left Pflaum's laptop computer with the building doorman. Later that night, BARAI informed Pflaum that BARAI retrieved the laptop from Pflaum's doorman. The laptop was never returned to Pflaum.

41. In another series of BBM communications between Pflaum and SAMIR BARAI, a/k/a "Sam," the defendant, on or about November 21, 2010, Pflaum told BARAI that Pflaum was "at the office taking care of stuff. Let me know if there is anything else u think I shud do." BARAI responded, "Just paper shred anything U see from contacts"

42. From my conversations with Freeman, my review of the audio recording of the December 20, 2010 meeting between Freeman and DONALD LONGUEUIL, the defendant, and my review of videotape surveillance from the apartment building in which LONGUEUIL resides, I have learned that, on November 19 and 20, 2010, immediately following the November 19, 2010 press reports of the FBI's insider trading investigation, LONGUEUIL destroyed evidence of his involvement in insider trading. Specifically, I have learned the following:

a. From my conversations with Freeman, I have learned that LONGUEUIL maintained a USB flash drive on which he saved his notes detailing the substance of the Inside Information he received from sales contacts at public companies. LONGUEUIL stored such notes on a USB drive, which he referred to as his "log," so that he could engage in trading activity based on the Inside Information he and his analyst received without risking that regulators or law enforcement officials would learn the substance of the information he received. In this manner, the

¹⁴ Based on my conversations with Pflaum, I have learned that Pflaum understood a "Department of Defense delete" to refer to deletions that cannot be restored.

information would not be maintained on the servers of the hedge funds at which he was employed, and therefore would be less likely to be reviewed by law enforcement officers.

b. On or about December 20, 2010, Freeman met with LONGUEUIL. During that meeting, which was consensually recorded, LONGUEUIL and Freeman discussed the "log," referring to the USB flash drive, that LONGUEUIL maintained. LONGUEUIL acknowledged that the log detailed the information he and his analyst obtained from employees at public companies, including the identity of their sources. LONGUEUIL told Freeman that, after reading the *Wall Street Journal* article detailed in Paragraph 32 above, LONGUEUIL destroyed his "log," as well as two external hard drives containing the "wafer data" LONGUEUIL obtained.¹⁵ LONGUEUIL stated, in substance and in part, that "the night that *Wall Street Journal* article came out . . . I pressed the eject button and everything's fucking gone." Freeman asked, "is the log gone?" to which LONGUEUIL responded, "destroyed . . . everything's gone." Freeman then inquired how LONGUEUIL got rid of the USB drive with the log; in response, LONGUEUIL stated, "Fuckin, I, uh, . . . I uh, chopped it up, chopped up everything." Freeman then remarked, "I don't see how you get rid of this shit," to which LONGUEUIL explained, "Oh, it's easy. You take two pairs of pliers, and then you rip it open . . . and then, it's just a piece of NAND.¹⁶ . . . So I just fucking ripped it apart right there. . . . I had two external drives that had like wafer numbers on 'em. Fuckin' pulled the external drives apart. Destroyed the platter. . . . Put 'em into four separate little baggies, and then at 2 a.m. . . . 2 a.m. on a Friday night, I put this stuff inside my black North Face [u/i] jacket, . . . and leave the apartment and I go on like

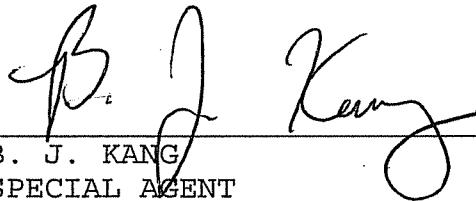
¹⁵ From my training and experience, my conversations with Pflaum, Freeman, and other cooperating witnesses, and my review of publicly available information, I have learned that a "wafer" is a thin, round slice of semiconductor material, typically silicon, from which microchips are made. Silicon is processed into large cylindrical ingots, sliced into ultra-thin wafers and then implanted with transistors before being cut into smaller semiconductor chips. Moreover, from conversations with current and former members of the investment community and other law enforcement agents, I believe that certain wafer data, including the amount of monthly wafer starts to be produced, is Inside Information.

¹⁶ NAND is a type of flash memory storage device that does not require power to retain data.

a twenty block walk around the city . . . and try to find a, a garbage truck . . . and threw the shit in the back of like random garbage trucks, different garbage trucks . . . four different garbage trucks." Freeman then remarked, "I can see the Feds. I can see the Feds trying to find [U/I]," to which LONGUEUIL responded, "well, they can [U/I] find it but its all fuckin' ripped apart. . . . Everything's gone." Freeman later asked LONGUEUIL whether he kept a back-up copy of the log, to which LONGUEUIL responded that he did not.

c. I have obtained and reviewed a copy of the November 19 and 20, 2010 video-surveillance from the apartment building in Manhattan in which LONGUEUIL resides. That video surveillance shows LONGUEUIL leaving his apartment building with another person at approximately 1:52 a.m. on November 20, 2010, and returning to his apartment building with that same person at approximately 2:33 a.m. The video-surveillance reflects that, as he exited and returned into the building, LONGUEUIL was wearing a jacket that appears to bear the North Face logo, just as he described to Freeman.

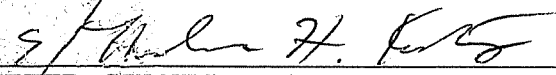
WHEREFORE, deponent prays that arrest warrants be issued for SAMIR BARAI, a/k/a "Sam, and DONALD LONGUEUIL, the defendants, and that they be imprisoned or bailed as the case may be.



B. J. KANG
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

FEB 07 2011

Sworn to before me this
_____ day of February 2011



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK