

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MITCHEL S. GUTTENBERG,
ERIK R. FRANKLIN,
DAVID M. TAVDY,
MARK E. LENOWITZ,
ROBERT D. BABCOCK,
ANDREW A. SREBNIK,
KEN OKADA,
DAVID A. GLASS,
MARC R. JURMAN,
RANDI E. COLLOTTA,
CHRISTOPHER K. COLLOTTA,
Q CAPITAL INVESTMENT PARTNERS, LP,
DSJ INTERNATIONAL RESOURCES LTD. (d/b/a
CHELSEY CAPITAL), and
JASPER CAPITAL LLC,

Defendants.

COMPLAINT

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

NATURE OF THE ACTION

1. This case involves two insider trading schemes in which Wall Street professionals serially traded on material, nonpublic information tipped -- in exchange for kickbacks -- by insiders at UBS Securities LLC ("UBS") and Morgan Stanley and Co., Inc. ("Morgan Stanley"). In the first scheme, which has been ongoing since 2001, at least eight securities industry professionals, three hedge funds, two broker-dealers, and a day-trading firm, made thousands of illegal trades and millions of dollars in profits using

inside information provided by an executive of UBS to trade ahead of UBS analyst recommendations (the “UBS insider trading scheme”). In the second scheme, several securities industry professionals and a hedge fund made dozens of illegal trades and hundreds of thousands of dollars in profits using inside information provided by an attorney at Morgan Stanley to trade ahead of corporate acquisition announcements (the “Morgan Stanley insider trading scheme”). Collectively, defendants made at least \$15 million in illicit profits from these two insider trading schemes.

2. In the UBS insider trading scheme, from at least 2001 through 2006, Mitchel S. Guttenberg (“Guttenberg”), an executive director at UBS, illegally tipped material, nonpublic information concerning upcoming UBS analyst upgrades, downgrades and other recommendations, to at least two Wall Street traders -- Erik R. Franklin (“Franklin”) and David M. Tavdy (“Tavdy”), in exchange for sharing in the illicit profits from their trading on that information. Franklin illegally traded on this inside information for Lyford Cay Capital, LP (“Lyford Cay”), a hedge fund at Bear, Stearns & Co., Inc. (“Bear Stearns”) that Franklin managed, Q Capital Investment Partners, LP (“Q Capital”), another hedge fund Franklin managed, and in his and his father-in-law’s personal accounts. Tavdy illegally traded on this inside information for Andover Brokerage, LLC (“Andover”) and Assent LLC (“Assent”), registered broker-dealers where Tavdy was a proprietary trader, in the accounts of Jasper Capital LLC (“Jasper Capital”), a day-trading firm with which Tavdy was associated, and in his and others’ personal accounts.

3. Franklin and Tavdy also had downstream tippees who traded on this material, nonpublic UBS information. Franklin tipped Mark E. Lenowitz (“Lenowitz”),

who illegally traded on this inside information for DSJ International Resources Ltd. (d/b/a/ "Chelsey Capital"), a private hedge fund at which Lenowitz was a portfolio manager, and in his personal accounts. Three registered representatives at Bear Stearns who knew of Franklin's UBS tips -- Robert D. Babcock ("Babcock"), Andrew A. Srebnik ("Srebnik"), and Ken Okada ("Okada") -- illegally traded on this inside information in their personal accounts and, in the case of Babcock, also for Lyford Cay. In addition, David A. Glass ("Glass"), the owner of Jasper Capital, a day-trading firm that operated from Assent's offices, traded on this inside information for Jasper Capital, and paid kickbacks to supervisory personnel at Assent to not disclose this trading scheme. Together, Guttenberg, Franklin, Tavdy, and their tippees made at least \$14 million in illegal profits in connection with the UBS insider trading scheme.

4. In the Morgan Stanley insider trading scheme, from at least 2004 through 2005, Randi E. Collotta, an attorney in Morgan Stanley's global compliance department, misappropriated material, nonpublic information concerning upcoming corporate acquisitions involving the firm's investment banking clients. Randi Collotta, together with her husband, Christopher K. Collotta, a lawyer in private practice, tipped that inside information to Marc R. Jurman ("Jurman"), a registered representative at a broker-dealer in Florida, in exchange for sharing in the illicit profits from Jurman's trading on that information. Jurman illegally traded on this inside information in his own account, and through his friend, Babcock, a registered representative at Bear Stearns who also was part of the UBS insider trading scheme. Babcock illegally traded on this inside information, sharing some of his illicit profits with Jurman, and tipped this information to Franklin and Okada, who also were part of the UBS insider trading scheme. Franklin illegally traded

on this inside information for Q Capital and in his father-in-law's account, and Okada illegally tipped this inside information to his father-in-law who then traded on the information. Together, the Collottas, Jurman, and their tippees made at least \$600,000 in illegal profits in connection with the Morgan Stanley insider trading scheme.

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5. By virtue of their conduct, each of the Defendants involved in these two insider trading schemes 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 [17 C.F.R. § 240.10b-5], and Defendants Q Capital, Chelsey Capital, Jasper Capital, Guttenberg, Franklin, Tavy, Lenowitz, Babcock, Srebnik, and Glass also violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]. Unless enjoined, Defendants are likely to commit such violations again in the future.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to Securities Act Sections 20(b), 20(d), and 22(a) [15 U.S.C. §§ 77t(b), (d), and 77v(a)] and Exchange Act Sections 21(d)(1), 21(e), 21A, and 27 [15 U.S.C. §§ 78u(d)(1), (e), 78u-1, and 78aa]. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails in connection with the conduct alleged herein.

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

DEFENDANTS

8. **Mitchel S. Guttenberg**, age 41, resides in New York, New York.

Guttenberg is a registered representative at UBS Securities LLC in New York, New York, and is an executive director and institutional client manager in the firm's equity research department.

9. **Erik R. Franklin**, age 39, resides in Fort Lee, New Jersey. At various times during the relevant period, Franklin was a portfolio manager for Lyford Cay Capital, LP and an employee of Bear, Stearns & Co., Inc. in New York, New York, an analyst for Chelsey Capital in New York, New York, and a portfolio manager for Q Capital Investment Partners, LP in Fort Lee, New Jersey.

10. **David S. Tavdy**, age 38, resides in Forest Hills, New York. At various times during the relevant period, Tavdy was a proprietary trader and registered representative at Andover Brokerage, LLC in New York, New York, a proprietary trader and registered representative at Assent LLC in New York, New York, and a trader at Jasper Capital LLC.

11. **Mark E. Lenowitz**, age 43, resides in Norwood, New Jersey. At times during the relevant period, Lenowitz was a portfolio manager for Chelsey Capital in New York, New York, and was a limited partner in Q Capital Investment Partners, LP.

12. **Robert D. Babcock**, age 33, resides in New York, New York. Babcock is a registered representative at Suntrust Capital Markets, Inc. During the relevant time period, Babcock was a registered representative at Bear, Stearns & Co., Inc. in New York, New York, and was associated with Lyford Cay Capital, LP.

13. **Andrew A. Srebnik**, age 35, resides in New York, New York. Srebnik is a registered representative at Jefferies & Company, Inc. During the relevant time period, Srebnik was a registered representative at Bear, Stearns & Co., Inc. in New York, New York.

14. **Ken Okada**, age 31, resides in New York, New York. Okada is a registered representative at Cathay Financial, Inc. During the relevant time period, Okada was a registered representative at Bear, Stearns & Co., Inc. in New York, New York.

15. **David A. Glass**, age 32, resides in Brooklyn, New York. Glass is the owner and president of Jasper Capital LLC. At times during the relevant period, Glass also was a registered representative at Assent LLC in New York, New York.

16. **Randi E. Collotta**, age 30, resides in Bayport, New York. Randi Collotta is an attorney and is the Director of Securities Operations at The Garden City Group, Inc. During the relevant time period, Randi Collotta was an attorney in the global compliance department of Morgan Stanley & Co., Inc. in New York, New York.

17. **Christopher K. Collotta**, age 34, resides in Bayport, New York. Christopher Collotta is an attorney in private practice.

18. **Marc R. Jurman**, age 31, resides in Palm Beach Gardens, Florida. At times during the relevant period, Jurman was a registered representative at the Boca Raton, Florida branch office of Marlins Capital, LLC, a registered broker-dealer, and a registered representative at the Boca Raton, Florida branch office of Finance 500, Inc., a registered broker-dealer.

19. **Q Capital Investment Partners, LP** is a Delaware limited partnership with offices in Fort Lee, New Jersey. During the relevant time period, Q Capital operated as a hedge fund.

20. **Jasper Capital LLC** is a New York limited liability company owned by David A. Glass. During the relevant time period, Jasper Capital operated as a day-trading firm from the offices of Assent LLC in New York, New York.

21. **DSJ International Resources Ltd.**, which does business as “Chelsey Capital,” is a New York corporation with offices in New York, New York. During the relevant time period, Chelsey Capital operated as a private hedge fund.

OTHER RELEVANT ENTITIES AND PERSONS

22. **UBS Securities LLC** is a Delaware limited liability company headquartered in New York, New York. UBS is a registered broker-dealer and a registered investment adviser.

23. **Bear, Stearns & Co., Inc.** is a Delaware corporation headquartered in New York, New York. Bear Stearns is a registered broker-dealer and a registered investment adviser.

24. **Morgan Stanley & Co., Inc.** is a Delaware corporation headquartered in New York, New York. Morgan Stanley is a registered broker-dealer and a registered investment adviser.

25. **Assent LLC** is a Delaware limited liability company headquartered in Hoboken, New Jersey. Assent is a registered broker-dealer.

26. **Andover Brokerage, LLC** was a New York limited liability company headquartered in Montebello, New York. During the relevant time period, Andover was a registered broker-dealer. In March 2003, Andover was acquired by Assent.

27. **Lyford Cay Capital, LP** was a Delaware limited partnership. During the relevant time period, Lyford Cay operated as a hedge fund from the offices of Bear Stearns in New York, New York. Lyford Cay was dissolved in 2004.

STATEMENT OF FACTS

I. THE UBS INSIDER TRADING SCHEME

A. Guttenberg's Access to Upcoming UBS Analyst Recommendations

28. Guttenberg is a registered representative at UBS, and is an executive director and institutional client manager in the firm's equity research department. As part of his duties at UBS, Guttenberg serves on UBS's Investment Review Committee ("IRC"), which reviews and approves UBS analyst recommendations, including coverage initiations, upgrades and downgrades, and other UBS analyst recommendation changes, before they are issued and publicly disseminated.

29. UBS's IRC convenes every business morning at 11:00 a.m. Each morning before the IRC meets, an agenda for that day's meeting, which includes a summary of the proposed analyst recommendations, is distributed by email to approximately eighty individuals at UBS on an email distribution list. This distribution list includes members of the IRC and others at UBS. Since at least 2001, Guttenberg has been a member of the IRC and has been on this email distribution list.

30. At the 11:00 a.m. IRC meeting, the IRC decides whether to approve the proposed analyst recommendations that are the subject of that meeting. That same day,

shortly after the meeting, the results of the meeting, including summaries of the approved analyst recommendations, are distributed to the same email distribution list described above. Generally, the analyst recommendations approved by the IRC are then forwarded that same day to supervisory analysts for final review and approval, and then are issued and publicly disseminated the following business morning before the U.S. securities markets open.

31. Between at least December 2001 and January 2003, UBS's equity rating system included five ratings -- "Strong Buy," "Buy," "Hold," "Reduce," and "Sell." From January 2003 to the present, UBS's equity rating system included three recommendations -- "Buy," "Neutral," and "Reduce."

32. Information concerning upcoming UBS analyst recommendations is valuable and material, nonpublic information. Once announced, a UBS analyst recommendation often affects the market price of the stock that is the subject of the recommendation. A UBS analyst upgrade on a stock, for example, typically will result in an increase in the stock price, while a downgrade typically will result in a decrease in the stock price. A reasonable investor would consider information concerning an upcoming UBS analyst recommendation important to his or her investment decision, and a significant alteration of the total mix of information available to the public concerning the stock that is the subject of the recommendation.

33. Since at least 2001, Guttenberg has been on UBS's IRC and the above described email distribution list, and thus has daily received material, nonpublic information concerning upcoming UBS analyst recommendations. As an employee of UBS, Guttenberg owed a fiduciary or other duty of trust and confidence to UBS to keep

that information confidential and not disclose or personally use that information. UBS's equity research manual specifically provides that:

The distribution of pending research, whether verbally or otherwise, to persons outside the Research Department prior to its issuance by the Research Department is prohibited by firm policy, and may subject the Firm to civil as well as regulatory liability.

Knowledge of a pending recommendation or change in opinion or estimates is considered to be 'market-sensitive information.' Pending initial recommendations, price target, estimate or opinion changes, and decisions to issue research reports or comments may not be disclosed by any means to anyone, either inside or outside of the Firm, until the information has been appropriately disseminated.

B. Guttenberg's Insider Trading Scheme with Franklin

1. Franklin's Illegal Trading

34. Guttenberg and Franklin are friends and have known each other for many years. Guttenberg's trading scheme with Franklin was hatched in 2001, when the two were meeting at the Oyster Bar in New York City. At the time, Guttenberg owed Franklin \$25,000 on a personal loan. While meeting at the Oyster Bar, Guttenberg proposed paying off that debt by providing Franklin with upcoming UBS analyst recommendations on which Franklin could trade before the recommendations became public. Franklin agreed.

35. Soon thereafter, in breach of Guttenberg's duty to UBS, Guttenberg began providing Franklin with material, nonpublic information concerning upcoming UBS analyst recommendations, including coverage initiations, upgrades and downgrades, and other analyst recommendation changes, which Franklin began using to purchase and sell securities in his personal accounts and for Lyford Cay, a hedge fund he managed at Bear

Stearns. Franklin knew, or should have known, that Guttenberg was breaching his duty to UBS by tipping Franklin this material, nonpublic information.

36. Guttenberg and Franklin agreed to share the after-tax profits from this illegal trading scheme. Originally, Guttenberg's share of the profits from this illegal trading scheme was applied to pay off Guttenberg's personal debt to Franklin. After that debt was paid, Guttenberg and Franklin continued the trading scheme and Franklin began paying Guttenberg his portion of the illegal profits in cash at arranged meeting places.

37. Early in this scheme, Guttenberg and Franklin both worked in New York City, and generally would meet in person for Guttenberg to provide Franklin with the upcoming UBS analyst recommendations. This process was cumbersome, however, given the volume of recommendations and the need to trade on that information quickly. So as the scheme evolved, Guttenberg and Franklin purchased disposable cell phones so that they had a convenient means to communicate that would be difficult for others to detect or trace. Using these disposable cell phones, Guttenberg sent coded text messages to Franklin of the upcoming UBS analyst recommendations. They would still meet in person from time to time for Franklin to pay Guttenberg his portion of the profits from the illegal trading, which they also arranged through text messaging on the disposable phones.

38. From 2001 through 2006, in breach of his duty to UBS, Guttenberg regularly provided Franklin with material, nonpublic information concerning upcoming UBS analyst recommendations. During that time period, using that material, nonpublic information, Franklin purchased and sold securities in his personal accounts, in the accounts of the two hedge funds he managed, Lyford Cay and Q Capital, and in an

account in the name of his father-in-law. Illicit profits from Franklin's illegal trading in these accounts exceeded \$5 million.

2. Lyford Cay and The Bear Stearns Tippees' Illegal Trading

39. When this illegal scheme first began, Franklin was a portfolio manager for the Lyford Cay hedge fund at Bear Stearns. Lyford Cay operated out of the New York City offices of Bear Stearns, and its investors included certain senior officials of the firm. Franklin, who was an employee of Bear Stearns, was a portfolio manager for Lyford Cay from approximately April 2001 through February 2002. From at least December 2001 through February 2002, Franklin purchased and sold securities for Lyford Cay using material, nonpublic information concerning upcoming UBS analyst recommendations tipped to him by Guttenberg.

40. Robert Babcock, a registered representative at Bear Stearns, entered trade orders for Lyford Cay during the time that Franklin managed that fund. Babcock also entered trade orders in Franklin's personal accounts at Bear Stearns, which Franklin kept at Bear Stearns after leaving Lyford Cay. Based on Franklin's trading patterns -- often making a profitable purchase or short sale of a security just before a UBS analyst upgrade or downgrade -- Babcock knew that Franklin was using material, nonpublic information to trade ahead of upcoming UBS analyst recommendations. Babcock also knew, or should have known, that this UBS information was tipped in breach of a duty to UBS. In 2001 and early 2002, while Franklin was still with Lyford Cay, Babcock monitored Lyford Cay's and Franklin's personal accounts for illegal trades based on UBS tips, and used that information to purchase and sell securities in his own personal account.

