UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. THOMAS P. FLANAGAN, AND PATRICK T. FLANAGAN, Defendants.	Civil Action No.

COMPLAINT

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

SUMMARY

1. This case involves repeated insider trading by Thomas P. Flanagan ("Flanagan"), a former partner and a Vice Chairman at Big Four accounting firm Deloitte and Touche LLP ("Deloitte"). Flanagan traded in the securities of multiple Deloitte clients on the basis of inside information that he learned through his duties as a Deloitte partner. The inside information concerned market moving events such as earnings results, revisions to earnings guidance, sales figures and cost cutting, and an acquisition. Flanagan's illegal trading resulted in profits of more than $430,000.

2. Flanagan also tipped his son Patrick to certain of this material nonpublic information. Patrick then traded based on that information. Patrick's illegal trading resulted in profits of more than $57,000.

3. Defendants Flanagan and Patrick directly and indirectly engaged in, and unless enjoined, will continue to engage in transactions, acts, practices, and courses of business which violate Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3].

4. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1] seeking a permanent injunction, disgorgement of trading profits plus prejudgment interest, and civil penalties.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

6. This Court has personal jurisdiction over the Defendants, and venue is proper in this Court, because both of the Defendants reside in this District and the acts, transactions, practices and course of conduct giving rise to the violations alleged in this Complaint occurred in this District.

DEFENDANTS

7. **Thomas P. Flanagan**, CPA, age 62, of Chicago, Illinois, is a certified public accountant licensed to practice in the state of Illinois. He began working at Deloitte's predecessor firm in 1970, and was a partner at Deloitte and its predecessor firms from 1978 until September 2008. At the time of his departure from Deloitte, Flanagan was a Vice Chairman in Deloitte's Chicago office and had over 35 years of public-company audit experience.

8. **Patrick T. Flanagan**, age 40, is a resident of Glencoe, Illinois and is Flanagan's son. Patrick has an M.B.A. from Northwestern University and has worked in various roles at

public and private companies. He is currently the Chief Operations Officer for a private company in the health care industry.

RELEVANT ENTITIES

9. **Deloitte & Touche LLP** is a Delaware limited liability partnership. Deloitte is a subsidiary of Deloitte LLP, which is a US member firm of Deloitte Touche Tohmatsu, a Swiss Verein, that is organized as an association of independent member firms worldwide which provides professional services under the "Deloitte" brand name. At all relevant times and continuing to the present, Deloitte has provided auditing services to a variety of companies, including companies whose securities are registered with the Commission and traded in the U.S. markets.

10. **Best Buy Co., Inc. ("Best Buy")** is a Minnesota corporation based in Richfield, Minnesota. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange and the Chicago Stock Exchange.

11. **Motorola, Inc. ("Motorola")** is a Delaware corporation based in Schaumburg, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

12. **Walgreen Company ("Walgreens")** is an Illinois corporation based in Deerfield, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange, NASDAQ, and the Chicago Stock Exchange.

13. **Option Care, Inc. ("Option Care")** was a Delaware corporation based in Buffalo Grove, Illinois. Its common stock was registered with the Commission pursuant to

Section 12(g) of the Exchange Act [15 U.S.C. §78l(g)] until approximately August 2007, and was traded on the NASDAQ. Walgreens acquired Option Care in August 2007.

14. **Sears Holding Corporation ("Sears")** is a Delaware corporation based in Hoffman Estates, Illinois. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the NASDAQ.

FACTS

A. Background

15. For over 35 years, Flanagan worked at Deloitte and its predecessor firms. Flanagan served as a Vice Chairman in Deloitte's Chicago office and as the Advisory Partner on several of Deloitte's audit engagements with its large clients.

16. As the Advisory Partner, Flanagan, among other things, served as a liaison between the audit clients' management team and the Deloitte audit engagement team, attended the clients' Audit Committee meetings, and received and had access to material nonpublic information regarding the clients' earnings results and other information.

17. Flanagan served as the Advisory Partner on Deloitte's audit engagements with Best Buy, Sears, and Walgreens, and served as a partner on Deloitte's consulting engagement with Motorola.

18. Flanagan owned or controlled trading accounts held in his name and jointly with his wife. He also controlled accounts in the name of his sons Michael L. Flanagan ("Michael") and Brien J. Flanagan ("Brien"), and sister-in-law Mia Pascale ("Mia"). He also controlled trading accounts in the name of the Luke R. Pascale Irrevocable Trust ("Pascale Trust"), a trust established by his father-in-law for Flanagan's wife and her siblings. Flanagan is the trustee for the Pascale Trust. Flanagan had the authority to make trades in all of these accounts.

19. Patrick owned and controlled several trading accounts in Patrick's name.

20. Flanagan and Patrick are father and son and have a close relationship. Flanagan and Patrick spoke on the telephone and emailed each other frequently, served on the board of a local private high school together, and their families vacationed together. Patrick also sought his father's advice on employment and business matters.

B. <u>Flanagan and Patrick Traded on the Basis of Inside Information</u>

21. Between 2003 and 2008, Flanagan made 71 purchases of stock and options in the securities of Deloitte audit clients. Flanagan made 62 of these purchases in the securities of Deloitte audit clients while serving as the Advisory Partner on those audits.

22. On at least 9 occasions between 2005 and 2008, Flanagan traded on the basis of material nonpublic information. Flanagan traded on the basis of material nonpublic information about Best Buy, Motorola, Sears, and Walgreens. On at least 4 occasions, Flanagan tipped Patrick who also traded based on this material nonpublic information. Flanagan benefited from his tips to his son Patrick.

23. Flanagan learned this information through his duties at Deloitte. Flanagan owed a fiduciary duty of trust and confidence to Best Buy, Motorola, Sears, and Walgreens as well as to Deloitte to keep this information confidential and not to trade on or disclose this information. Patrick knew or should have known that the information that Flanagan gave him had been provided in breach of a fiduciary duty to his father's clients and to Deloitte.

24. Flanagan made all of these trades in accounts that he owned and in accounts that he controlled for the benefit of Michael, Brien, Mia, and the Pascale Trust. Patrick made his trades in accounts that he owned and controlled.

Insider Trading in Walgreens

25. On October 1, 2007, before the stock market opened, Walgreens publicly announced that it earned $.40 per share for the fourth quarter of 2007 which ended on August 31, 2007. This was 14.8% less than the $.47 earnings per share that stock market analysts had forecasted. This was Walgreens' first earnings decrease in nearly a decade. That day, Walgreens' stock price closed at $40.16, a 15% decline from the $47.24 closing price on September 28, 2007, the previous trading day.

26. Flanagan learned of Walgreens' lower-than-expected fourth quarter earnings results prior to the public release of this information and traded on the basis of this information. He also tipped Patrick about the earnings results before the information became public. Patrick then purchased Walgreens put options.

27. On the morning of September 25, 2007, a staff member on Deloitte's Walgreens engagement team emailed to Flanagan a copy of Walgreens' income statement for the fourth quarter of 2007 and fiscal year 2007. The income statement showed that Walgreens had earned $.40 per share for the fourth quarter of 2007.

28. Later that morning, Flanagan participated in a phone call with the lead engagement partner, senior manager, and a manager on Deloitte's Walgreens engagement team to discuss Walgreens' fourth quarter and year-end results in advance of Walgreens' upcoming earnings press release. The engagement team updated Flanagan about Walgreens' financial results, including the $.40 per share earnings figure.

29. During the evening of September 25, 2007, the senior manager sent Flanagan a draft earnings press release from Walgreens stating that Walgreens had earned $.40 for the fourth quarter of 2007, which represented a 3.8% decline from the same quarter of the prior year.

30. Flanagan tipped Patrick to Walgreens' quarterly earning results before the information became public. Within 10 minutes of receiving the draft earnings press release, Flanagan called Patrick twice for a total of five minutes.

31. At 9:26 a.m. on September 26, 2007, Patrick purchased 100 out-of-the-money Walgreens October put option contracts with a strike price of $45 for $.35 per contract. He paid $3,585 for these contracts.

32. A put option contract gives its owner the right to sell a specified amount of stock within a specified time at a specified price (known as the strike price). A put option buyer typically hopes that the stock will drop in price.

33. Put options are "out-of the-money" when the strike price is lower than the current market price of the underlying stock at the time of sale. For example, if XYZ stock is trading at $50, and an investor buys put options with a $45 strike price, the puts are out-of-the-money. By contrast, put options are "in-the-money" when the strike price is above the current market price. Options said to be trading "at-the-money" have a strike price that is the same as the underlying share price. When the strike price is the same or within a few cents of the current market price, the option is said to be trading "at-the-money."

34. At 6:08 p.m. on September 27, 2007, Flanagan received an email from Walgreens' Controller, in advance of Walgreens' Audit Committee meeting scheduled for 2 p.m. the next day. The Controller also sent this email to other expected meeting attendees. The email contained a link to a secure Walgreens internal website where the email recipients could access the draft earnings press release and financial statements announcing the $.40 earnings figure and the meeting agenda. Flanagan forwarded the email to his assistant at 7:12 p.m., with orders that she print out the documents and hand them to him.

35. Approximately 40 minutes later, Flanagan called Patrick, speaking for four minutes.

36. Flanagan called his stock broker at 9:52 a.m. on September 28, 2007, speaking for four minutes. At 10:40 a.m., Flanagan purchased for the Pascale Trust account 350 out-of-the-money Walgreens October put option contracts with a strike price of $47½ for $1.079 per contract. Flanagan paid $39,148 for these contracts.

37. At 9:56 a.m., immediately after speaking with his broker, Flanagan called Patrick. The call lasted one minute. At 11:40 a.m., Patrick purchased 35 out-of-the-money Walgreens October put contracts with a strike price of $47½ for $1.10 per contract. He paid $3,886 for these contracts.

38. On October 1, 2007, after Walgreens issued its earnings press release, Flanagan sold the 350 put option contracts that he bought in the Pascale Trust account. He sold 175 of the contracts on October 1 for $7.10 per contract, realizing a profit of $103,362. He sold 85 contracts on October 3 for $7.40 per contract, realizing a profit of $52,629. He sold the remaining 90 contracts on October 5 for $8 per contract, realizing a profit of $61,338. Flanagan realized a total profit of $217,329.

39. On October 1, 2007, Patrick sold the 100 put contracts with a $45 strike price for between $3.60 and $3.80 per contract, and sold the 35 put contracts with a $47.50 strike price for between $6.20 and $7 per contract. He realized a profit of $50,778.

Insider Trading in Motorola

40. On January 23, 2008, before the stock market opened, Motorola announced in its fiscal year 2008 earnings press release that sales of mobile devices had declined 38% during the fourth quarter of 2007, which ended on December 31, 2007, from the fourth quarter of 2006.

Motorola also announced that it was "aggressively rationalizing the company's cost structure." By the end of the day, Motorola's stock price closed at $10.01, an 18.75% decline from the $12.32 closing price on January 22, 2008.

41. Flanagan learned of Motorola's sharp decline in mobile device sales and its plan to aggressively cut costs before the public release of this information and traded on the basis of this information.

42. At the time he learned this information, Flanagan was a partner on Deloitte's non-audit consulting engagement with Motorola.

43. On January 3, 2008, a Deloitte partner on the consulting engagement team for Motorola met with Motorola's new CEO to provide recommendations for company strategy.

44. The next day, the partner sent an email to Flanagan and several other members of Deloitte's Motorola engagement team. The email contained an Associated Press article from that day concerning an analyst's report that Motorola's handset sales had "missed the Christmas window."

45. The partner wrote in the subject line of the email, "Motorola Inc. Shares Decline – At our mtg yersterday (sic) [the CEO] said [Mobile Device] performance 'will be significantly worse than anybody imagined' and a huge across the board cost cutting is in the works."

46. On the afternoon of January 11, 2008, Flanagan and the partner had a telephone meeting lasting approximately 30 minutes to discuss the Motorola situation.

47. On the next trading day, January 14, 2008, Flanagan purchased for his own account 585 out-of-the-money Motorola February put contracts with a strike price of $13 for $.17 per contract.

48. On January 23, 2008, shortly after Motorola issued its press release, Flanagan sold all 585 put option contracts for a total profit of $137,474.

Insider Trading in Option Care

49. On July 2, 2007, Walgreens publicly announced that it had reached an agreement to acquire Option Care for $19.50 per share. That day, Option Care's stock price closed at $19.24 per share, up 25%, from its $15.40 closing price on June 29, 2007, the prior trading day.

50. Flanagan learned about the acquisition agreement before the public release of this information and traded on the basis of this information. He also tipped Patrick before the information became public. Patrick then purchased Option Care stock.

51. At the time Flanagan and Patrick traded, substantial steps had been taken to commence Walgreens' tender offer for the shares of Option Care stock. Specifically, Walgreens and Option Care had entered into a confidentiality agreement, hired financial advisors, were cooperating in Walgreens' due diligence investigation, exchanged drafts of the acquisition agreement, and were negotiating the final per share purchase price.

52. At 5 p.m. on June 18, 2007, Flanagan participated in a conference call with the lead engagement partner, senior manager, and other staff on Deloitte's Walgreens engagement team in advance of several meetings with Walgreens executives scheduled for June 20, 2007. During the call, the Deloitte engagement team informed Flanagan that Walgreens' acquisition of Option Care was imminent and that the engagement team was monitoring it. The team also explained and discussed Option Care's several business lines with Flanagan.

53. At 5:42 p.m., approximately 10 minutes after the end of the conference call, Flanagan sent an email to his broker telling him to call Flanagan's cell phone. Flanagan called

his broker at 8:19 a.m. on June 19, 2007, speaking for four minutes. His broker called Flanagan back at 8:49 a.m., speaking for 16 minutes, and again at 9:07 a.m., speaking for two minutes

54. At 9:24 a.m. on June 19, Flanagan purchased 850 shares in Brien's account for $15.47 per share and 1,500 shares of Option Care common stock in Michael's account for $15.48 per share. Flanagan paid a total of $36,790 for these 2,350 shares. Flanagan had never traded in Option Care before.

55. On June 20, 2007, Flanagan purchased 1,900 Option Care shares for $15.54 per share in his own account, and 1,900 shares for $15.58 in the Pascale Trust account. Flanagan paid a total of $59,727 for these 3,800 shares.

56. After he made these stock purchases, Flanagan attended several meetings with Walgreens executives on June 20, 2007 in advance of Walgreens' Audit Committee meeting scheduled for the next day. In one of those meetings, Walgreens' CEO told Flanagan and Deloitte's lead audit engagement partner that Walgreens was soon likely to announce an agreement to acquire Option Care.

57. Flanagan tipped Patrick about the Option Care acquisition before the information became public. Flanagan first called Patrick at 5:40 p.m. on June 18, 2007, just before Flanagan emailed his broker. Flanagan's call lasted two minutes. Between the June 18, 2007 conference call and the evening of June 20, 2007, Flanagan and Patrick called each other eight times for a total of 20 minutes. Flanagan's last calls to Patrick were on the evening of June 20, 2007, after Flanagan's meetings with Walgreens' executives.

58. On the morning of June 21, 2007, Patrick purchased 1,200 Option Care shares for $15.40 per share. Patrick paid $18,494 for these shares. Patrick had never traded in Option Care before.

59. On July 10, 2007, Flanagan sold all of the Option Care shares in his account and the accounts he controlled for the Pascale Trust, Michael, and Brien on the morning of July 10, 2007 for between $19.32 and $19.33 per share. Flanagan made a profit of $6,581 in his account, $6,488 in the Pascale Trust account, $5,246 in Michael's account, and $2,918 in Brien's account.

60. Patrick sold 800 Option Care shares on the same day as his father for $19.32 per share, realizing a profit of $3,114. Patrick sold another 200 shares on July 24, 2007 for $19.39 per share. Patrick received a cash settlement for the remaining 200 shares from Walgreens on September 12, 2007 for $19.50 per share, as part of the tender offer. In total, Patrick made a profit of $4,714.

Insider Trading in Sears

61. On May 29, 2008, before the stock market opened, Sears publicly announced an earnings loss of $.43 per share for the first quarter, which ended May 3, 2008. Stock market analysts had previously estimated that Sears would report a first quarter profit of $.21 per share. On May 29, 2008, Sears' stock price closed at $86.14 per share, a 3.6% decline from the $89.36 closing price on May 28, 2008.

62. Flanagan learned of Sears' lower-than-expected first quarter earnings per share results prior to the public release of this information and traded on the basis of this information. He also tipped Patrick before the information became public. Patrick then purchased Sears put options.

63. On May 16, 2008, the lead engagement partner on Deloitte's Sears engagement team sent Flanagan an email containing the first draft of Sears' earnings press release. The release described Sears' earnings results for the first quarter and included the $.43 per share earnings loss.

64. On the morning of May 19, 2008, the first trading day after he received the lead engagement partner's email, Flanagan purchased for the Pascale Trust account 85 out-of-the-money Sears June put contracts with a strike price of $90 for $3.60 per contract. Flanagan paid $31,020 for these contracts.

65. Flanagan tipped Patrick about Sears' unexpected earnings loss before the information became public. Between May 17, 2008 and Monday, May 25, 2008, Flanagan and Patrick spoke 15 times on the phone for a total of 43 minutes.

66. On May 22, 2008, Flanagan received an email from Sears' Assistant Controller in advance of a Sears' Audit Committee teleconference scheduled for May 28, 2008. Documents attached to the email included the draft press release, financial statements for the quarter, and the draft Form 10-Q to be filed with the Commission. All of these documents contained the $.43 per share earnings loss figure.

67. At 8:00 a.m. on May 28, 2008, Flanagan attended the Sears Audit Committee teleconference meeting, during which the quarterly earnings report was discussed in detail.

68. At 9:31 a.m. on May 28, 2008, Patrick called Flanagan. At 9:59 a.m., less than an hour after the Audit Committee meeting ended, Flanagan called Patrick. They spoke for two minutes.

69. At 10:07 a.m., six minutes after hanging up with his father, Patrick logged into his on-line trading account. This was the first time Patrick had accessed his account that day.

70. At 10:34 a.m., Patrick bought 40 out-of-the-money Sears June put option contracts with a strike price of $85 for $3.40 per contract. Patrick paid $13,639 for these contracts. Patrick had never traded in Sears before.

71. On the afternoon of May 29, 2008, after Sears issued its earnings press release, Patrick sold 20 of his put option contracts for a loss of $1,343.

72. On May 30, 2008, Flanagan sold all of his 85 put option contracts for $7 each, for a profit of $27,946.

73. On June 6, 2008, Patrick sold the remaining 20 put option contracts at $4.70 each for a profit of $2,547.

Insider Trading in Best Buy

I. Best Buy Q3 2006 Earnings Release (December 2005)

74. On December 13, 2005, before the stock market opened, Best Buy publicly announced that it earned $.28 per share for the third quarter of 2006 which ended on November 26, 2005. The quarterly earnings per share was at the low end of the $.28 to $.32 earnings per share range that Best Buy had previously provided in its earnings guidance. Best Buy's earnings per share were also 6.7% less than the $.30 per share that stock market analysts had forecasted. On December 13, 2005, Best Buy's stock price closed at $43.94, an 11.8% decline from its $49.84 closing price on December 12, 2005.

75. Flanagan learned of Best Buy's less-than-expected third quarter earnings per share results prior to the public release of this information and traded on the basis of this information.

76. On the morning of December 8, 2005, Flanagan received an email from the assistant to Best Buy's Vice President of Finance, Planning & Reporting Management in advance of Best Buy's Audit Committee's pre-earnings release conference call scheduled for the afternoon of December 9, 2005. Documents attached to this email included the Third Quarter Performance Summary, Consolidated Statement of Earnings, and the Consolidated Condensed

Balance Sheets. All of these documents contained Best Buy's third quarter earnings results of $.28 per share. The Performance Summary also contained the $.30 earnings per share figure forecasted by stock market analysts.

77. Later that same morning, Flanagan received another email from the assistant containing the same documents.

78. On the morning of December 9, 2005, Flanagan purchased 13 out-of-the-money Best Buy March put option contracts with a strike price of $47½ for $2.70 per contract for Mia's account. Flanagan paid $3,684 for these contracts.

79. On December 14, 2005, the day after Best Buy publicly announced its earnings results, Flanagan sold all 13 put option contracts for $4.90 per contract and realized a profit of $2,480.

II. Best Buy's Q3 2007 Earnings Press Release (December 2006)

80. On December 12, 2006, before the stock market opened, Best Buy publicly announced that it earned $.31 per share for the third quarter of 2007 which ended on November 25, 2006. This was 11.4% less than the $.35 earnings per share that stock market analysts had forecasted. On December 12, 2006, Best Buy's stock price closed at $51.30, a 4.9% decline from the $53.92 closing price on December 11, 2007.

81. Flanagan learned of Best Buy's lower-than-expected third quarter earnings results prior to the public release of this information and traded on the basis of this information. He also tipped Patrick before the information became public. Patrick then purchased Best Buy put options.

82. In the early afternoon of December 8, 2006, Flanagan received an email from the assistant to Best Buy's Vice President of Finance, Planning & Reporting Management ("Vice

President of Finance") in advance of the Audit Committee's pre-earnings release conference call scheduled for the morning of December 11, 2006. The assistant also sent this email, which was labeled "Confidential," to other expected meeting attendees. Documents attached to this email included the Third Quarter Performance Summary, Consolidated Statement of Earnings, and the Consolidated Condensed Balance Sheets. All of these documents contained Best Buy's quarterly earnings results of $.31 per share. The Performance Summary also contained the $.35 per share earnings forecasted by stock market analysts.

83. Approximately two hours later, Flanagan and other expected meeting attendees received an email, labeled "Confidential," from Best Buy's Vice President for Finance containing Best Buy's current year-to-date results, its original annual earnings guidance for fiscal year 2007, and its updated earnings guidance.

84. Later on the evening of December 8, 2006, a Deloitte partner on the Best Buy engagement team forwarded the assistant's email to Flanagan and other members of the Deloitte engagement team.

85. On Saturday, December 9, 2006, Flanagan tipped Patrick about Best Buy's earnings results before the information became public. Telephone records show that Flanagan called Patrick three times that day for a total of 11 minutes.

86. At the stock market's opening on Monday, December 11, 2006, the first trading day after he learned the earnings results from his father, Patrick bought 35 out-of-the-money Best Buy December put option contracts with a strike price of $52.50 for $1.25 per contract for his account. At the same time, Patrick also purchased 15 out-of-the-money Best Buy December put option contracts with a strike price of $55 for $2.50 per contract for his account. Patrick paid

a total of $8,182 for these 50 contracts. All of these contracts were set to expire on December 16, 2006.

87. Patrick purchased these contracts with the intention of selling them immediately after Best Buy publicly announced its earnings results because he already knew what Best Buy would announce for its earnings results. At 9:24 p.m. on December 11, 2006, Patrick created an entry on his electronic calendar for 7:15 a.m. on December 12, 2006 that read, "Schwab – closing bby." BBY is Best Buy's stock ticker symbol.

88. At 9:40 a.m., Flanagan bought for the Pascale Trust account 40 out-of-the-money Best Buy December put option contracts with a strike price of $55 for $2.38 - $2.40 per contract. Flanagan paid $9,871 for these contracts. These contracts were set to expire on December 16, 2006.

89. On December 12, 2006, shortly after Best Buy issued its press release announcing its earnings, Flanagan and Patrick sold all their put option contracts. Flanagan sold his contracts for $4.01 per contract for a profit of $5,836. Patrick sold his contracts for a profit of $2,270.

III. Best Buy's Q1 2008 Earnings Press Release (June 2007)

90. On June 19, 2007, before the stock market opened, Best Buy publicly announced that it earned $.39 per share for the first quarter of 2008 which ended on June 2, 2007. This represented an 18% decline from the prior year's first quarter earnings per share and was 22% lower than the stock market analysts' consensus estimate of $.50 per share. On June 19, 2007, Best Buy's stock price closed at $45.18, a 5.9% decline from the $48.01 closing price on June 18, 2007.

91. Flanagan learned of Best Buy's lower-than-expected first quarter earnings per share results prior to the public release of this information and traded on the basis of this information.

92. On June 15, 2007, Flanagan received an email from the assistant to Best Buy's Vice President of Finance in advance of Best Buy's Audit Committee pre-earnings release conference call scheduled for the afternoon of June 18, 2007. Documents attached to this email included the Third Quarter Performance Summary, Consolidated Statement of Earnings, and the Consolidated Condensed Balance Sheets. All of these documents contained Best Buy's quarterly earnings of $.39 per share. The Performance Summary also contained the $.50 per share earnings figure estimated by stock market analysts.

93. At 8:00 a.m. on Monday, June 18, 2007, the first trading day after he received this email, Flanagan bought for his own account 210 out-of-the-money Best Buy August put option contracts with a strike price of $45 for $.95 per contract. He also bought 315 of the same contracts at the same price for the Pascale Trust account. Flanagan paid a total of $51,479 for these 525 contracts.

94. Flanagan sold 150 of the put option contracts in the Pascale Trust account for $1.15 per contract on June 19, 2007, approximately two hours after Best Buy issued its earnings press release, realizing a profit of $2,029.

95. He sold the remaining 165 put options in the Pascale Trust account for $1.35 per contract on June 20, 2007, realizing a profit of $5,538.

96. Flanagan also sold the 210 put options in his account for $1.35 per contract on June 20, 2007, realizing a profit of $7,025.

IV. Best Buy's Press Release (February 2008)

97. On February 15, 2008, before the stock market opened, Best Buy issued a press release announcing a reduction to its fiscal year 2008 earnings forecast from a previous range of $3.10 to $3.20 per share to a range of $3.05 to $3.10. Best Buy cited weaker-than-expected revenue growth from January sales in several major categories. Best Buy also lowered its anticipated annual stores sales gains from approximately 4% to a range of 2.5% to 3%. Best Buy also announced that its fourth quarter revenue would fall short of its internal targets. On February 15, 2008, Best Buy's stock price closed at $44.62, a 2.5% decline from the $45.77 closing price on February 14, 2008.

98. Prior to the issuance of the press release, Best Buy had not announced the weaker-than-expected revenue growth from January sales, lower anticipated annual stores sales gains, and fourth quarter revenue shortfall. Best Buy had publicly reiterated its 2008 earnings guidance of $3.10 to $3.20 per share a month earlier on January 11, 2008.

99. Flanagan learned that Best Buy was going to announce a reduction to its 2009 earnings and annual store sales gain guidance, and the fourth quarter revenue shortfall prior to the public announcement and traded on the basis of that information.

100. On February 12, 2008 at 7:45 p.m., the lead engagement partner on the Best Buy engagement team sent an email to Flanagan and another member of Deloitte's engagement team. The lead engagement partner attached a draft of Best Buy's February 15, 2008 press release. The draft press release included the same information regarding Best Buy's weaker-than-expected revenue growth from January sales, lower anticipated annual stores sales gains, and fourth quarter revenue shortfall that was contained in Best Buy's press release issued to the public.

101. In her email, the lead engagement partner provided a summary of the earnings guidance figures for fiscal year 2008 that Best Buy had previously provided to the public. The summary also contained the reduced earnings guidance figures for fiscal year 2008 that Best Buy included in its draft and final February 15, 2008 press releases. The lead engagement partner also stated in her email that, "… sales fell off a cliff in the last month with superbowl (sic) missing all expectations…"

102. That night, Flanagan replied to the lead engagement partner's email, directing her to call him on February 13 or 14, 2008.

103. When the stock market opened on February 13, 2008, Flanagan purchased 100 out-of-the-money Best Buy March put contracts with a strike price of $45 for the Pascale Trust account for $1.95 per contract. He also purchased 50 Best Buy March put contracts with a strike price of $45 for his own account for $1.95 per contract. Flanagan paid a total of $28,850 for these 150 contracts.

104. Flanagan sold all 100 put contracts in the Pascale account for between $2.30 and $2.34 per contract on March 5, 2008, realizing a profit of $2,823.

105. Flanagan also sold all 50 put contracts in his own account for between $2.65 and $2.72 per contract on March 5, 2008, realizing a profit of $3,011.

V. Best Buy's Q4 Earnings Press Release (April 2008)

106. On April 2, 2008, before the stock market opened, Best Buy publicly announced that it earned $1.71 per share for the fourth quarter of 2008 which ended on March 1, 2008. This represented a 10% increase from the prior year's fourth quarter earnings per share and was 4% higher than the stock market analysts' consensus estimate of $1.65 earnings per share. On April

2, 2008, Best Buy's stock price closed at $43.94, a 1.08% increase from the $43.47 closing price on April 1, 2008.

107. Flanagan learned of Best Buy's higher-than-expected fourth quarter earnings prior to its public release and traded on the basis of this information.

108. On March 28, 2008, Flanagan received an email from a Best Buy employee in advance of Best Buy's Audit Committee pre-earnings release conference call scheduled for the afternoon of March 31, 2008. Documents attached to the email included the Fiscal 2008 Fourth Quarter Performance Summary and the Condensed Consolidated Statement of Earnings. Both documents included the $1.71 per share earnings figure. The Performance Summary also contained the stock market analysts' consensus earnings estimate of $1.65 per share.

109. That afternoon, Flanagan forwarded this email to his assistant with orders to print the attached documents.

110. On March 31, 2008, Flanagan attended the Audit Committee conference call, during which the earnings results and the stock market analysts' estimates were discussed.

111. On April 1, 2008, Flanagan bought for the Pascale Trust account 165 Best Buy May call option contracts with a strike price of $42.50 for $2.45 per contract. Flanagan also bought for his own account 85 Best Buy May call option contracts with a strike price of $42.50 for $2.45 per contract. Flanagan paid a total of $62,264 for these 250 contracts.

112. A call option contract gives its owner the right to buy a specified amount of stock within a specified time at a specified price (known as the strike price). A call option buyer typically hopes that the stock will rise in price.

113. On April 2, 2008, after Best Buy issued its press release, Flanagan sold 82 of the call options in the Pascale Trust account for $3.20 per contract, realizing a profit of $5,441.

Flanagan exercised the remaining 83 calls on May 16, 2008. By exercising the calls, Flanagan bought the 8,300 underlying shares of Best Buy stock. He then sold the 8,300 shares on May 19, 2008 for a loss of $6,919. If Flanagan had instead sold the remaining 83 option contracts in the Pascale Trust account at the close of trading on April 2, 2008, he would have made a profit of $6,988.

114. Flanagan exercised the 85 call options in his account on May 19, 2008 and sold the resulting 8,500 shares the same day for $44.52 per share for a realized loss of $7,356. If Flanagan had sold the 85 option contracts in his account at the close of trading on April 2, 2008, he would have made profit of $5,525.

C. <u>Flanagan Concealed His Trading in the Audit Clients' Securities and Circumvented Deloitte's Independence Compliance System</u>

115. Flanagan was required to comply with the Commission's auditor independence rules with respect to the Deloitte audit clients he served as the Advisory Partner. Flanagan was also required to comply with the Commission's auditor independence rules with respect to certain other Deloitte audit clients because he worked in the same office as the lead partner on those audits.

116. Under the Commission's auditor independence rules, accountants are not independent as to an audit client if, among other things, the accounting firm, or any covered person in the firm, or any of his or her immediate family members, has a direct investment in the audit client, such as stocks, bonds, notes, options, or other securities, or if the accountant serves as the voting trustee of a trust containing securities of an audit client. Flanagan was a covered person as to Best Buy, Sears, and Walgreens.

117. Flanagan knew and understood the Commission's auditor independence rules.

118. Between 2003 and 2008, Flanagan made 71 purchases of stock and options in the securities of Deloitte audit clients in violation of the Commission's auditor independence rules. Flanagan made 62 of these purchases in the securities of Deloitte audit clients while serving as the Advisory Partner on those audits. These purchases include the trades Flanagan made on the basis of material nonpublic information in Best Buy, Sears, and Walgreens described above. Flanagan made all of these purchases in accounts he owned, or in accounts he controlled for the benefit of Michael, Brien, and Mia, and in the Pascale Trust account.

119. At all relevant times, Deloitte had policies and quality control procedures in place designed to ensure that its professional personnel maintain their independence relative to Deloitte's audit clients. Deloitte's independence policies and procedures were primarily contained in Deloitte's Independence Manual.

120. Flanagan knew and understood Deloitte's independence policies and procedures. Flanagan circumvented these policies and procedures.

121. Deloitte's independence policies and procedures required, among other things, that its professional staff, including partners, self-report all of their securities holdings and trading activities. These professionals were also required to report all securities trades that they made as a trustee for accounts that they controlled. Deloitte created the Deloitte Entity Search and Compliance system ("DESC") and the Tracking and Trading system ("Tracking and Trading") for its professional staff to use to report these transactions.

122. The DESC contained a "Restricted Entity List," which contained the names of all companies, banks, brokerage firms, and other institutions that Deloitte prohibited its professional staff from, among other things, having a financial interest in or maintaining an account. All of Deloitte's audit clients within the United States, including the audit clients at issue here, were

included in the Restricted Entity List, which Deloitte updated regularly. Prior to making a securities trade, Deloitte required its professional staff to access the DESC and Restricted Entity List to verify that the company, brokerage firm, or other entity involved in the transaction was not restricted. After completing the transaction, its professional staff had 10 calendar days to report it to Deloitte via Tracking and Trading.

123. Deloitte's Independence Manual also contained Deloitte's policy prohibiting insider trading and the disclosure of inside information.

124. Deloitte required its professional staff to file annual Independence Representations and affirm between 30 and 50 specific statements. These statements concerned the staff member's financial transactions during the previous year, understanding of, and compliance with, Deloitte's independence policies, and other topics. If the staff member responded to a statement with anything other than "Agree," the staff member had to provide a written explanation, which Deloitte's Independence and Ethics Compliance Group then reviewed.

125. Beginning in 2007, Deloitte's professional staff had to affirm in their Independence Representations that they had read and understood Deloitte's policies related to insider trading. Flanagan did so in October 2007.

126. Flanagan concealed from Deloitte his trades in the securities of Deloitte's clients, including those described in this Complaint, by failing to report these trades in the Tracking and Trading System. He also failed to report the existence of several trading accounts he owned or controlled, including those in which he made the trades described in this Complaint.

127. Flanagan also lied to Deloitte about his compliance with Deloitte's independence policies. In the Independence Representations he filed in 2004, 2005, 2006, and 2007, Flanagan falsely affirmed that:

a. Tracking and Trading accurately reflected the brokerage accounts and financial interests held or controlled by Flanagan;

b. at no time during the representation period did he have a financial interest in a Restricted Entity; and

c. he had not served as a trustee, executor, or administrator of an estate that had a financial interest in a Restricted Entity.

128. In fact, Flanagan owned or controlled several brokerage accounts, and owned and controlled stocks and options, which he had not reported in Tracking and Trading. He also owned or controlled stocks and options in Restricted Entities, including the Deloitte clients for whom he served as an Advisory Partner. In addition, Flanagan served as the trustee for a family trust and controlled brokerage accounts in the name of that trust and in the name of other family members. Flanagan traded in the securities of Restricted Entities in several of these accounts.

129. Flanagan's efforts to conceal from Deloitte his trades in the securities of Deloitte clients extended to the furnishing of false information in the preparation of his personal income tax returns. He utilized Deloitte Tax LLP ("Deloitte Tax") to prepare his tax returns. Flanagan provided Deloitte Tax personnel with the names of the securities he purportedly traded during the tax year, the trade dates, and his gains or losses. For the tax years 2004 through 2007, Flanagan substituted the names of Deloitte audit clients whose securities he traded in with the names of other entities for which he had no trading restrictions. Between 2004 and 2007,

Flanagan substituted unrestricted company names for 13 trades that he made in the securities of seven Deloitte clients, including Best Buy, Sears, and Walgreens.

CLAIMS FOR RELIEF

CLAIM ONE

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Defendants Thomas P. Flanagan and Patrick T. Flanagan)

130. The Commission realleges and incorporates by reference Paragraphs 1 through 129 as though fully set forth herein.

131. During the relevant time periods, Defendant Thomas P. Flanagan, in connection with the purchase and sale of Best Buy, Motorola, Option Care, Sears, and Walgreens securities, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted 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 engaged in acts, practices and courses of business which operated as a fraud and deceit upon the purchasers and sellers of such securities.

132. During the relevant time periods, Defendant Patrick T. Flanagan, in connection with the purchase and sale of Best Buy, Option Care, Sears, and Walgreens securities, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted 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 engaged in acts, practices and courses of business which operated as a fraud and deceit upon the purchasers and sellers of such securities.

133. Both Defendants acted with scienter when he engaged in the conducted alleged above.

134. As a result of the activities described above, the Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

CLAIM TWO

Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder (Against Defendants Thomas P. Flanagan and Patrick T. Flanagan)

135. The Commission realleges and incorporates by reference Paragraphs 1 through 9, 12, 13, 15 through 24, 49 through 60, and 115 through 129 as though fully set forth herein.

136. Prior to the public announcement of the tender offer for Option Care, and after a substantial step or steps to commence the tender offer had been taken, Defendant Thomas P. Flanagan purchased securities of Option Care while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such an issuer.

137. Prior to the public announcement of the tender offer for Option Care, and after a substantial step or steps to commence the tender offer had been taken, Defendant Thomas P. Flanagan, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, communicated material nonpublic

information relating to the tender offer to Patrick under circumstances in which it was reasonably foreseeable that the communication was likely to result in the purchase of securities of Option Care.

138. Prior to the public announcement of the tender offer for Option Care, and after a substantial step or steps to commence the tender offer had been taken, Defendant Patrick T. Flanagan purchased securities of Option Care, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such an issuer.

139. By virtue of the foregoing, the Defendants violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

a. permanently enjoin Defendants Thomas P. Flanagan and Patrick T. Flanagan from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder;

b. order Defendant Thomas P. Flanagan to disgorge with prejudgment interest all ill-gotten gains received as a result of the conduct alleged above, including the trading profits in his accounts and accounts which he controlled and, on a joint and several basis, Patrick's trading profits;

c. order defendant Patrick T. Flanagan to disgorge with prejudgment interest all ill-gotten gains received as a result of the conduct alleged above, including his own trading profits on a joint and several basis with defendant Thomas P. Flanagan;

d. order Defendants Thomas P. Flanagan and Patrick T. Flanagan to pay civil monetary penalties pursuant to Section 21A of the Exchange Act, and;

e. grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

DATED: August 4, 2010

s/ Steven L. Klawans

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