

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

	:	
SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
JOSEPH M. TOCCI,	:	JURY TRIAL
	:	DEMANDED
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendant Joseph M. Tocci (“Tocci” or “Defendant”).

PRELIMINARY STATEMENT

1. This case involves illegal insider trading by Tocci in the securities of American Superconductor Corporation (“AMSC”) shortly before the company announced on April 5, 2011 that its financial results for fourth quarter and fiscal year ended March 31, 2011 would be lower than expected due to a deteriorating relationship with its primary customer, Sinovel Wind Group Co., Ltd. (“Sinovel”).

2. During the last week of March 2011, AMSC was actively engaged in discussions with Sinovel in China to determine if Sinovel would accept certain contracted shipments that were ready for delivery and make overdue payments for prior shipments.

3. By March 31, 2011, Tocci, then AMSC’s assistant treasurer, learned through communications with AMSC’s Chief Financial Officer (“CFO”) that Sinovel had refused to

accept the current shipments and failed to pay AMSC for the prior shipments. The CFO instructed Tocci to keep this information confidential.

4. The next day, April 1, 2011, Tocci improperly used this material, nonpublic information to purchase option contracts through which Tocci essentially bet that AMSC's stock price would soon decrease. Following the company's April 5, 2011 announcement, the stock price did just that—plummeting 42 percent. As a result of his illegal trading, Tocci made actual profits of approximately \$82,439.

5. By knowingly or recklessly engaging in the conduct described in this Complaint, Tocci violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

6. The Commission seeks an injunction against future violations, disgorgement of illicit profits, prejudgment interest thereon, and a civil penalty.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1].

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa]. The Defendant has directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

9. Venue in this district is proper under 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because the acts, practices, transactions and courses of

business constituting the alleged securities law violation(s) occurred in substantial part within this district and because Tocci resides in this district.

DEFENDANT AND RELEVANT ENTITIES

10. Joseph M. Tocci, age 59, is a resident of Belmont, Massachusetts. Tocci worked as the assistant treasurer of AMSC from October 5, 2009 to October 28, 2011.

11. American Superconductor Corporation is headquartered in Devens, Massachusetts. Its common stock is publicly traded on the NASDAQ under the symbol "AMSC." During the relevant time, AMSC provided hardware and software for the wind power industry. AMSC's fiscal year begins on April 1 and ends on March 31.

12. Sinovel Wind Group Co., Ltd. is a Chinese company engaged in the development, design, manufacturing and sale of wind turbines. From at least fiscal year 2008 through 2010, Sinovel was AMSC's primary customer, and AMSC's sales to Sinovel generated approximately 67-70 percent of AMSC's revenues.

FACTUAL ALLEGATIONS

A. Commercial Risk Posed By AMSC's Reliance on Sinovel

13. Because a significant portion of AMSC's revenues were derived from Sinovel, loss of business from Sinovel loomed as a risk to AMSC's financial results and stock price. AMSC disclosed this risk in its public filings with the Commission. For example, AMSC's Annual Report on Form 10-K for its fiscal year ended March 31, 2010 included the following disclosure:

Revenue growth in fiscal 2009, 2008 and 2007 was driven largely by our AMSC Power Systems business unit. Our largest customer is Sinovel in China. Sinovel accounted for a majority of our total revenues during these periods. Revenues from Sinovel are supported by purchase orders and contracts for electrical system core components as well as development contracts for the design

of wind turbines. If Sinovel cancelled purchase orders or development contracts, or discontinued future purchases from us, we would likely be unable to replace the related revenues. This would have a serious negative impact on our operating results and financial position.

14. Under the contracts between AMSC and Sinovel, AMSC typically made monthly shipments of products to Sinovel, for which Sinovel would normally pay within 30 days. Starting in approximately September 2010, however, Sinovel missed and/or delayed payments for certain delivered shipments.

15. During the fourth quarter of AMSC's fiscal year ended March 31, 2011, Sinovel requested that AMSC upgrade the technology in certain products and indicated that it may not accept additional shipments without such changes.

16. AMSC's Executive Vice President and General Manager of Power Systems (the "EVP") flew to China the last week of that quarter to negotiate with Sinovel regarding the requested product modifications, the acceptance of approximately \$65 million in products scheduled for delivery by March 31, 2011 (the "March Shipments"), and the payment of approximately \$62 million in outstanding receivables.

17. AMSC's finance staff, including Tocci, knew the revenues expected from the March Shipments were significant.

18. On March 31, 2011, at approximately 8:00 a.m. Eastern Standard Time (EST), after protracted negotiations, Sinovel's president informed AMSC's EVP that Sinovel would not accept the March Shipments or presently pay down its overdue accounts receivable balance. The EVP promptly relayed this information to other AMSC executive officers.

B. Tocci Learns Sinovel Will Not Accept Current Shipments or Pay for Past Shipment From AMSC

19. On the evening of March 30, 2011, AMSC's CFO, who was away in Florida at the time, emailed his direct reports (which included Tocci as well as AMSC's corporate controller, general counsel, managing director of investor and media relations, and managing director of finance) an update on AMSC's negotiations with Sinovel. The CFO reported that there would be "no cash from Sinovel for the end of the quarter" and that the parties were "still negotiating whether the [March Shipments] will happen." He further added: "If we do ship, prepare for higher A/R [accounts receivable] again. Not sure when cash will come."

20. On the morning of Thursday, March 31, 2011, when the CFO learned Sinovel had refused to accept the March Shipments, he immediately called the corporate controller, who was at AMSC's headquarters, and asked her to gather his direct reports for a conference call. The corporate controller then gathered Tocci and the others and called back the CFO.

21. During the ensuing phone call, the CFO informed his direct reports, including Tocci, that Sinovel had refused to accept the March Shipments and failed to pay the past due amounts for earlier shipments. These developments, the CFO said, would likely require a public announcement from AMSC within the next few days. Accordingly, the CFO tasked the corporate controller and the managing director of finance with analyzing the impact of Sinovel's actions on AMSC's quarterly and yearly financial statements. He also instructed Tocci to analyze the impact on the company's cash position if Sinovel refused to make payments for the next several months.

22. Shortly after this telephone conference, at 10:50 a.m. (EST), the CFO emailed his direct reports, including Tocci, instructing them to "Keep our conversation [about Sinovel] this AM confidential." A few hours later, Tocci replied via email, "Of course."

23. This same afternoon (Thursday, March 31, 2011), the CFO emailed Tocci, the corporate controller, and the managing director of finance informing them that there would likely be a Board of Directors meeting that Saturday and that he would need to see the cash flow analysis before then. The CFO also informed Tocci and the others that he would likely tell AMSC's external auditors about the developments with Sinovel that Monday.

C. Tocci Trades While in Possession of the Material, Non-public Information Concerning AMSC's Relationship With Sinovel

24. The very next day, Friday, April 1, 2011, Tocci purchased 100 "put option" contracts on AMSC stock. A "put option" contract is a security that gives the purchaser the right, but not the obligation, to sell 100 shares of a company's stock for a specified price, known as the "strike price," until the expiration date of the option contract. Generally, the value of a put option will increase as the price of the underlying stock decreases, and will decrease as the price of the underlying stock increases.

25. Specifically, Tocci purchased 50 put options with a \$24 strike price and May 21, 2011 expiration through his Fidelity brokerage account, and another 50 put options with a \$23 strike price and the same expiration date through a brokerage account at TradeStation, for a total cost of approximately \$12,653.

26. By purchasing the 100 put options, Tocci had the right to sell 10,000 shares of AMSC stock for \$23 or \$24 per share (depending on the contract) until the put options expired on May 21, 2011. On March 31, 2011, AMSC's stock price closed at \$25.12, and on April 1, 2011, it closed at \$25.13. With the benefit of inside information, Tocci essentially wagered that the price of AMSC stock would fall—which is exactly what happened five days later.

27. On April 5, 2011, after the close of trading, AMSC issued an update regarding its anticipated financial results for its fourth quarter and fiscal year ended March 31, 2011. The public announcement provided, in pertinent part, that:

- Sinovel had refused to accept the March Shipments and AMSC expected Sinovel to reduce its level of inventory before accepting further shipments;
- As a result, AMSC expected its fourth quarter revenues to be less than \$42 million and to generate a net loss for the quarter;
- AMSC's yearly revenues would be less than \$355 million (as compared with the company's prior forecast for fiscal year 2010 revenues of \$430-\$440 million);
- AMSC's GAAP and non-GAAP earnings for fiscal year 2010 would be well below the company's previous forecasts;
- AMSC's cash balance was negatively impacted by Sinovel's failure to pay for certain contracted shipments made in fiscal year 2010; and
- AMSC would be reviewing the appropriateness of the timing of its revenue recognition on approximately \$56 million in unpaid shipments in fiscal year 2010.

28. On April 6, 2011, the day after this public announcement, the price of AMSC's common stock dropped approximately 42 percent (from a close of \$24.88 per share on April 5, 2011 to a close of \$14.47 per share on April 6, 2011).

29. On April 6 and 7, 2011, Tocci sold his AMSC put options for approximately \$95,092, profiting by \$82,439.

30. Tocci knew, or was reckless in not knowing, that he purchased AMSC securities while in possession of material, nonpublic information.

31. The information provided to Tocci by AMSC's CFO on March 30 and 31, 2011 was not publicly disseminated at that time; rather AMSC restricted the information to select persons within AMSC and required them to keep the information confidential.

32. The information was material because it concerned a significant development in AMSC's relationship with its primary customer and impacted AMSC's financial results, causing the company to change previously issued guidance. A reasonable investor would have viewed this information as being important to his or her investment decision or a significant alteration of the total mix of information made available to the public about AMSC.

D. Tocci Knew His Trading Was Prohibited

33. Tocci owed a duty to AMSC not to use confidential information he received from AMSC for his own personal benefit.

34. At all relevant times, AMSC had a written policy in effect that prohibited AMSC employees from: (1) trading in "puts, calls or other derivative securities based on [AMSC's] securities" at any time; and (2) purchasing, selling or donating securities of AMSC while aware of any material, nonpublic information concerning the company.

35. This insider trading policy further prohibited certain "designated" employees from purchasing, selling or donating AMSC securities during a "corporate blackout" period. A corporate blackout period began two weeks before the end of each fiscal quarter and ended after the second full trading day after the public announcement of earnings for such quarter.

36. Tocci, as a designated employee, was subject to the corporate blackout period in effect for the quarter ended March 31, 2011. The blackout period began on March 14, 2011 and continued until at least April 7, 2011, when the company lifted the trading restrictions for certain persons.

37. AMSC enforced its insider trading policy by, among other things, monitoring and restricting trading in the company's securities in designated E*TRADE brokerage accounts that it provided to its employees. As described above, Tocci traded AMSC put options through other brokerage accounts he maintained at Fidelity and TradeStation.

38. AMSC provided Tocci with a copy of its insider trading policy when he joined the company and Tocci acknowledged that he had received and read the policy, which was also available on AMSC's intranet.

39. In March 2010, Tocci completed a training course called "Avoiding Insider Trading," which AMSC provided to certain of its employees.

40. On March 28, 2011, just a few days prior to his purchase of AMSC put options, Tocci completed an internal "Code of Conduct" training, which again addressed the importance of compliance with the company's insider trading policy.

41. Consequently, Tocci knew, or recklessly disregarded, that his trading in AMSC put options while in possession of material, nonpublic information—regarding revenue and order shortfalls from Sinovel—violated AMSC's insider trading policy and breached fiduciary duties he owed to AMSC.

CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)

42. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 41 above.

43. By engaging in the conduct described above, Tocci, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or of a national securities exchange: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of

material facts or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon certain persons.

44. As a result, Tocci violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Tocci and each of his agents, servants, employees and attorneys and those persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

B. Require Tocci to disgorge his ill-gotten gains and losses avoided, plus pre-judgment interest;

C. Order Tocci to pay an appropriate civil monetary penalty;

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E. Award such other and further relief as the Court deems just and proper.

JURY DEMAND

The Commission hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

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