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SI

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

CV 09

5883

14 SECURITIES AND EXCHANGE COMMISSION,

Case No. _____

15 Plaintiff,

16 v.

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

17 VINAYAK S. GOWRISH,
18 ADNAN S. ZAMAN,
19 PASCAL S. VAGHAR,
and
SAMEER N. KHOURY,

DEMAND FOR JURY TRIAL

20 Defendants,

21 and

22 ELIAS N. KHOURY,

23 Relief Defendant.

24
25 Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against
26 Vinayak S. Gowrish, Adnan S. Zaman, Pascal S. Vaghar, and Sameer N. Khoury (collectively,
27 "Defendants"), alleges as follows:
28

SUMMARY OF ALLEGATIONS

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2 1. This case involves an unlawful serial insider trading scheme to profit on highly
3 confidential merger and acquisition information misappropriated by a former vice president and
4 investment banker at Lazard Frères & Co. LLC (“Lazard”) and a former associate at the multi-billion
5 dollar private equity firm TPG Capital, L.P. (“TPG”). The former Lazard investment banker, Adnan
6 S. Zaman (“Zaman”), and the former TPG associate, Vinayak S. Gowrish (“Gowrish”), illegally
7 tipped material, nonpublic merger and acquisition information to Pascal S. Vaghar (“Vaghar”) and
8 Sameer N. Khoury (“Sameer Khoury”), who traded stock and options on the basis of the tipped
9 information and realized total profits of nearly \$500,000. In exchange for tipping the information,
10 Gowrish received cash kickbacks from Vaghar, and Zaman received kickbacks in the form of cash,
11 free rent, and other items of value from Vaghar and Sameer Khoury totaling approximately \$70,000.
12

13 2. In an attempt to keep the ring secret, some of the defendants took steps to avoid
14 detection. For example, information was exchanged during in-person meetings, on yellow sticky
15 notes and through coded text messages, and Zaman instructed Vaghar to trade in small quantities so
16 as not to draw regulatory scrutiny. To avoid detection and any type of paper trail when providing
17 cash kickbacks, Vaghar made checks payable to himself or to “cash.”
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19 3. By engaging in this course of conduct, Defendants violated Section 10(b) of the
20 Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] (“Exchange Act”) and Rule 10b-5 thereunder
21 [17 C.F.R. § 240.10b-5]. Defendants Zaman and Vaghar also violated Section 14(e) of the Exchange
22 Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]. Unless enjoined,
23 Defendants are likely to commit such violations again in the future.
24

JURISDICTION AND VENUE

25 4. The Commission brings this action pursuant to Sections 21(d) and 21A of the
26 Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1], to enjoin such transactions, acts, practices, and
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1 courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties and such
2 other relief as the Court may deem just and appropriate.

3 5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A and
4 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 and 78aa]. Defendants, directly or
5 indirectly, have made use of the means and instrumentalities of interstate commerce or of the mails,
6 or the facilities of a national securities exchange, in connection with the acts, practices and courses of
7 business alleged herein.

8 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
9 § 78aa] because certain acts constituting the violations of law alleged in this Complaint occurred in
10 this judicial District.
11

12 INTRADISTRICT ASSIGNMENT

13 7. This action arises in the San Francisco Division of this Court because a substantial
14 part of the events which give rise to the claim occurred within San Francisco county.
15

16 DEFENDANTS

17 8. Vinayak S. Gowrish, age 31, is a resident of San Francisco, California. During the
18 relevant time period, he worked as an associate in the San Francisco office of TPG Capital, L.P., a
19 global private investment firm. In August 2007 he transferred to TPG Credit Management, L.P. in
20 Minneapolis, Minnesota.
21

22 9. Adnan S. Zaman, age 30, is a resident of San Jose, California. During the relevant
23 time period, Zaman lived in San Francisco, California, and worked in Lazard's San Francisco office
24 in the investment banking group as an associate. He transferred to the firm's restructuring group in
25 New York, New York in July 2007. He is licensed by FINRA as a General Securities Representative
26 (Series 7).
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1 10. **Pascal S. Vaghar**, age 35, is a resident of Emeryville, California. He is currently
2 unemployed.

3 11. **Sameer N. Khoury**, age 32, is a resident of Emeryville, California. He is employed
4 as a mortgage broker.
5

6 **RELIEF DEFENDANT**

7 12. **Elias N. Khoury**, age 35, is Sameer Khoury's brother. Sameer Khoury traded
8 securities on the basis of material, nonpublic information in a brokerage account held by Elias
9 Khoury.

10 **BACKGROUND**

11 13. Zaman and Gowrish are friends and have known each other for many years. They
12 attended high school together and college together at the University of California at Berkeley, where
13 they were fraternity brothers. During the relevant period, Zaman, Gowrish, and Vaghar lived in or
14 around San Francisco, California, and socialized frequently, and Zaman and Gowrish, who worked in
15 offices near one another, met frequently during the work day.
16

17 14. Sameer Khoury worked in the mortgage industry and was a friend of Vaghar's. When
18 Zaman was looking for property in California, Vaghar introduced him to Sameer Khoury. Zaman
19 subsequently rented an apartment from Sameer Khoury.
20

21 15. From at least December 2006 through May 2007, Zaman, as a Lazard investment
22 banker, and Gowrish, as an associate at TPG, were privy to highly confidential information
23 concerning deal negotiations of acquisitions and potential acquisitions involving Lazard clients and
24 TPG, respectively.

25 16. Lazard had written policies that barred trading without pre-approval and prohibited the
26 dissemination of material, nonpublic information relating to pending transactions in which Lazard
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1 was involved. Through repeated training and other means, Zaman knew of these policies and, as a
2 condition of his employment, agreed to abide by them.

3 17. TPG likewise had written policies that prohibited the disclosure of confidential and
4 material, nonpublic information. Gowrish knew of these policies and, as a condition of his
5 employment, agreed to abide by them.
6

7 18. In breach of his fiduciary and other duties of trust and confidence owed to Lazard and
8 its clients, Zaman misappropriated and illegally tipped Lazard acquisition information to Vaghar and
9 Sameer Khoury, who profitably traded on the basis of Zaman's information.

10 19. In breach of his fiduciary and other duties of trust and confidence owed to TPG,
11 Gowrish misappropriated and illegally tipped TPG acquisition information to Zaman. Zaman then
12 illegally tipped the material, nonpublic TPG acquisition information to Vaghar and Sameer Khoury,
13 both of whom profitably traded on the basis of the information.
14

15 20. On the basis of the material, nonpublic Lazard and TPG acquisition information,
16 Vaghar executed trades in his account and also provided Zaman with access to his account so that
17 Zaman could directly execute the trades.

18 21. In addition to trading in his own account, Sameer Khoury also traded on the basis of
19 the tipped information in the account of his brother, relief defendant Elias N. Khoury ("Elias
20 Khoury"). Although Elias Khoury allowed Sameer Khoury to trade in his account, Elias Khoury was
21 not always aware that Sameer Khoury had traded in his account and was never aware that Sameer
22 Khoury had executed the trades on the basis of the material, nonpublic information tipped by Zaman.
23 Sameer Khoury and Elias Khoury split the profits from the trades Sameer Khoury executed in Elias
24 Khoury's account.
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1 **FACTUAL ALLEGATIONS**

2 **The Lazard Acquisition Information**

3 *The Acquisition of webMethods, Inc.*

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5 22. On or before March 11, 2007, Zaman learned from one of his colleagues at Lazard that
6 the investment bank was advising a public company (“Bidder A”) on a possible acquisition of
7 webMethods, Inc. (“webMethods”).

8 23. webMethods was a Virginia-based business integration and optimization software
9 company whose stock traded on the NASDAQ.

10 24. Zaman tipped material, nonpublic information to Vaghar and Sameer Khoury that
11 webMethods was in negotiations to be acquired by Bidder A. Zaman knew, or was reckless in not
12 knowing, that his tip was in breach of his fiduciary duty to Lazard and its clients.

13 25. On the basis of the information tipped by Zaman, (i) Sameer Khoury on March 21,
14 2007 purchased 1,000 shares of webMethods in Elias Khoury’s account, and (ii) Vaghar on April 3,
15 2007 purchased 40 May \$7.50 and 40 July \$7.50 webMethods call options, and 1,000 shares of
16 webMethods. Both Sameer Khoury and Vaghar knew, or were reckless in not knowing, that the
17 information provided to them by Zaman was conveyed in breach of Zaman’s duty to Lazard and its
18 clients.

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21 26. A call option is a type of security. Each call option grants the holder the right, but not
22 the obligation, to purchase 100 shares at a set price, by the expiration date. For example, a purchaser
23 of 40 webMethods May \$7.50 call options has the right to buy 4,000 shares of webMethods at \$7.50
24 per share from the purchase date of the options until the third Friday in May, when the options would
25 expire. The purchaser of the call options gains this right in return for payment of a fee called an
26 option premium. The purchaser of the call options hopes the stock will increase in price, so that he or
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1 she will then have the right to sell the stock at a higher price than the price at which the options
2 entitled him or her to buy the stock.

3 27. Although Bidder A was unsuccessful in its bid for webMethods, on April 5, 2007,
4 webMethods announced that it was being acquired by Software AG for \$9.15 per share. Following
5 the announcement, webMethods' stock price closed at \$9.26 per share, a 27% increase from the
6 previous closing price of \$7.28 per share.
7

8 28. After the public announcement of the acquisition, Sameer Khoury sold all 1,000
9 shares of webMethods for a profit of approximately \$2,000, and Vaghar sold all of his webMethods
10 call options and stock for a profit of approximately \$11,000.

11 *The Acquisition of Myogen, Inc.*

12 29. On July 10, 2006, Gilead Sciences, Inc. ("Gilead") retained Lazard to advise it in
13 connection with its possible acquisition of Myogen, Inc. ("Myogen").
14

15 30. Myogen was a Colorado-based biopharmaceutical company whose stock traded on the
16 NASDAQ.

17 31. By virtue of his employment at Lazard, and through communications with other
18 Lazard employees, Zaman was aware of, and had access to, material, nonpublic information
19 concerning the acquisition of Myogen.
20

21 32. Zaman tipped material, nonpublic information to Vaghar that Gilead was in
22 negotiations to acquire Myogen. Zaman knew, or was reckless in not knowing, that his tip was in
23 breach of his fiduciary duty to Lazard and its clients.

24 33. Between September 21, 2006 and September 28, 2006, on the basis of the information
25 tipped by Zaman, Vaghar purchased a total of 80 Myogen call options – 50 October \$40 call options,
26 20 October \$35 call options, and 10 December \$35 call options. Vaghar knew, or was reckless in not
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1 knowing, that the information provided to him by Zaman was conveyed in breach of Zaman's duty to
2 Lazard and its clients.

3 34. On October 2, 2006, Myogen announced that it was being acquired by Gilead for
4 \$52.50 per share in a tender offer. Following the announcement, Myogen's stock price closed at
5 \$51.44 per share, a 47% increase from the previous closing price of \$35.08 per share.
6

7 35. After the public announcement of the acquisition, Vaghar sold all of his Myogen call
8 options for a profit of approximately \$102,000.

9 **The TPG Acquisition Information**

10 *The Acquisition of Sabre Holdings Corp.*

11 36. On or about October 13, 2006, TPG entered into a non-disclosure and standstill
12 agreement with Sabre Holdings Corp. ("Sabre") concerning a possible acquisition of Sabre.
13

14 37. Sabre is a Texas-based online travel services company whose stock traded on the New
15 York Stock Exchange.

16 38. On or about November 22, 2006, TPG assigned Gowrish to the team evaluating a
17 possible acquisition of Sabre.

18 39. Gowrish tipped material, nonpublic information to Zaman that TPG was in
19 negotiations to acquire Sabre. Zaman then tipped this information to Vaghar and Sameer Khoury.
20 Gowrish, Zaman, Vaghar, and Sameer Khoury each knew, or was reckless in not knowing, that
21 Gowrish's tip was in breach of his fiduciary duty to TPG.
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23 40. On December 5, 2006 and December 7, 2006, on the basis of the information tipped
24 by Gowrish through Zaman, Vaghar purchased a total of 120 January \$30 Sabre call options and 250
25 shares of Sabre stock.
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1 41. Between December 6, 2006 and December 12, 2006, on the basis of the information
2 tipped by Gowrish through Zaman, Sameer Khoury purchased a total of 184 February \$30 Sabre call
3 options.

4 42. On or about December 11, 2006, Sabre announced that it was being acquired by TPG
5 and Silver Lake Partners for \$32.75 per share. Following the announcement, Sabre's stock price
6 closed at \$31.96, a 13% increase from the previous closing price of \$28.32 per share.
7

8 43. After the public announcement of the acquisition, Vaghar sold all of his Sabre call
9 options and stock for a profit of approximately \$16,900, and Sameer Khoury sold 64 of his Sabre call
10 options for a profit of approximately \$1,400.

11 *The Acquisition of TXU Corp.*

12 44. On or about November 30, 2006, TPG entered into a confidentiality agreement with
13 TXU Corp. ("TXU") concerning TPG's possible acquisition of TXU.
14

15 45. TXU is a Texas-based energy company whose stock traded on the New York Stock
16 Exchange.

17 46. By virtue of his employment at TPG, and through communications with other TPG
18 employees, Gowrish was aware of, and had access to, material, nonpublic information concerning
19 TPG's possible acquisition of TXU.
20

21 47. Gowrish tipped material, nonpublic information to Zaman that TPG was in
22 negotiations to acquire TXU. Zaman then tipped this information to Vaghar and Sameer Khoury.
23 Gowrish, Zaman, Vaghar, and Sameer Khoury each knew, or was reckless in not knowing, that
24 Gowrish's tip was in breach of his fiduciary duty to TPG.

25 48. Between February 6, 2007 and February 21, 2007, on the basis of the information
26 tipped by Gowrish through Zaman, Vaghar purchased a total of 175 TXU call options – 80 April
27 \$57.50 call options, 75 April \$60 call options, and 20 July \$57.50 call options.
28

1 49. Between February 8, 2007 and February 21, 2007, on the basis of the information
2 tipped by Gowrish through Zaman, Sameer Khoury purchased a total of 179 TXU call options – 49
3 April \$57.50 call options and 130 April \$60 call options (64 of which he purchased in Elias Khoury’s
4 account).

5
6 50. On or about February 23, 2007, TXU announced that it was being acquired by TPG,
7 Kohlberg Kravis Roberts & Co., and GS Capital Partners for \$69.25 per share. Following the
8 announcement, TXU’s stock price closed at \$67.93 per share, a 13% increase from the previous
9 closing price of \$60.02 per share.

10 51. After the public announcement of the acquisition, Vaghar sold 140 of his TXU call
11 options for a profit of approximately \$109,000, and Sameer Khoury sold all of his and Elias Khoury’s
12 TXU call options for a profit of approximately \$133,000.

13
14 *The Proposed Acquisition of Alliance Data Systems Corp.*

15 52. On or about March 8, 2007, TPG entered into a non-disclosure agreement with
16 Alliance Data Systems Corp. (“ADS”) concerning a possible acquisition of ADS.

17 53. ADS is a Texas-based data services company whose stock trades on the New York
18 Stock Exchange.

19 54. In April 2007, Gowrish was working as a member of the TPG team evaluating TPG’s
20 possible acquisition of ADS.

21 55. Gowrish tipped material, nonpublic information to Zaman that TPG was in
22 negotiations to acquire ADS. Gowrish, Zaman, Vaghar, and Sameer Khoury each knew, or was
23 reckless in not knowing, that Gowrish’s tip was in breach of his fiduciary duty to TPG.
24

25 56. Between April 9, 2007 and May 11, 2007, on the basis of the information tipped by
26 Gowrish through Zaman, Sameer Khoury purchased 55 June \$65 ADS call options (35 of which were
27 purchased in Elias Khoury’s account) and 30 May \$65 ADS call options.
28

1 57. Between May 4, 2007 and May 10, 2007, on the basis of the information tipped by
2 Gowrish through Zaman, Vaghar purchased a total of 60 June \$65 ADS call options and 500 shares of
3 ADS.

4 58. On or about May 16, 2007, TPG learned that ADS intended to accept an offer to be
5 acquired by another entity.
6

7 59. On May 17, 2007, ADS announced that it was being acquired by The Blackstone
8 Group for \$81.75 per share. Following the announcement, ADS's stock price closed at \$78.46, a
9 25% increase from the previous closing price of \$62.96 per share.

10 60. After the public announcement of the acquisition, Sameer Khoury sold all 35 of his
11 ADS call options purchased in Elias Khoury's account for a profit of approximately \$36,000, and
12 Vaghar sold all of his ADS call options and stock for a profit of approximately \$78,000.
13

14 **Zaman and Gowrish Illegally Tipped Material, Nonpublic Information to**
15 **Vaghar and Sameer Khoury**

16 61. Advance knowledge of an acquisition is valuable and material, nonpublic information
17 because the announcement typically precipitates an increase in the price of the acquired issuer's
18 securities due to the premium that the acquirer is willing to pay.

19 62. A reasonable investor would have considered the Lazard and TPG acquisition
20 information important to his or her investment decision and a significant alteration of the total mix of
21 information available to the public.

22 63. The stock prices of webMethods, Myogen, Sabre, TXU, and ADS increased materially
23 when each of their acquisitions was announced publicly.

24 64. Zaman tipped material, nonpublic information to Vaghar and Sameer Khoury through
25 in-person meetings and/or by writing trading instructions – including the ticker symbol of the call
26 option (or stock) and the number of contracts (or shares) to purchase – on yellow sticky notes. Coded
27 text messages were used to exchange trading instructions.
28

1 65. Gowrish tipped material, nonpublic information to Zaman through, among other
2 methods, in-person meetings.

3 66. In exchange for the tipped material, nonpublic information, Sameer Khoury, who was
4 Zaman's landlord during the relevant time period, provided kickbacks to Zaman in the form of cash
5 and free rent.

6 67. In exchange for the tipped material, nonpublic information, Vaghar provided Zaman
7 and Gowrish with cash kickbacks and also purchased personal items for Zaman on his credit card.

8 68. The kickbacks were structured to avoid detection. Vaghar wrote checks made payable
9 to himself or to "cash," cashed those checks, and then provided the cash to Zaman and Gowrish to
10 avoid any type of paper trail.

11 69. In addition to providing cash kickbacks, Vaghar not only purchased items on his credit
12 card for Zaman, but also gave his credit card to Zaman so that Zaman could (i) charge purchases of
13 personal items in stores, and (ii) set up an Amazon.com account in Vaghar's name and use Vaghar's
14 credit card in order to purchase items on-line for himself.

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17 **Zaman and Gowrish Breached Their Duties to Maintain Information in Confidence**

18 70. Zaman, in the course of his employment as an investment banker at Lazard, and
19 Gowrish, in the course of his employment as an associate at TPG, had access to material, nonpublic
20 information concerning Lazard clients and TPG acquisition information, respectively. As part of
21 their employment at Lazard and TPG, Zaman and Gowrish not only agreed, but were required, to
22 maintain in confidence information about potential acquisitions, and to abstain from trading on the
23 basis of that information or disclosing it to others.

24 71. Zaman knew that the Lazard acquisition information was material and nonpublic.
25 Zaman breached his fiduciary or other duties of trust and confidence he owed to Lazard and to its
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1 clients by misappropriating and tipping this information to Vaghar and Sameer Khoury, who then
2 traded on the basis of the information.

3 72. Zaman also tipped material, nonpublic information he received from Gowrish
4 concerning certain acquisitions to Vaghar and Sameer Khoury. Zaman knew, or was reckless in not
5 knowing, that Gowrish tipped the information to him in breach of a fiduciary or other duty of trust
6 and confidence Gowrish owed to TPG.

7
8 73. Gowrish knew that the acquisition information he learned in the course of his TPG
9 employment was material and nonpublic. Gowrish breached his fiduciary or other duties of trust and
10 confidence he owed to TPG by misappropriating and tipping this information to Zaman, who then
11 tipped the information to Vaghar and Sameer Khoury.

12
13 74. Zaman derived a direct or indirect pecuniary benefit or a reputational benefit from
14 disclosing the material information to Vaghar and Sameer Khoury. Gowrish likewise derived a direct
15 or indirect pecuniary benefit or a reputational benefit from disclosing the material information to
16 Zaman, who then disclosed that information to Vaghar and Sameer Khoury.

17 **Vaghar and Sameer Khoury Traded Illegally**

18 75. Vaghar traded in the securities of webMethods and Myogen, and Sameer Khoury
19 traded in the securities of webMethods, on the basis of the illegal tips they received from Zaman.

20
21 76. Gowrish illegally tipped information to Zaman concerning the acquisitions of Sabre,
22 TXU, and ADS. Vaghar and Sameer Khoury traded on the basis of this information.

23 77. Vaghar and Sameer Khoury each knew, or was reckless in not knowing, that the
24 information tipped from Zaman was disclosed in breach of a fiduciary or other duty of trust and
25 confidence owed to the source of the information.
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III.

Permanently enjoining defendant Zaman and defendant Vaghar from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];

IV.

Ordering Defendants and relief defendant Elias Khoury to disgorge all of the ill-gotten gains obtained from the violations alleged herein, plus prejudgment interest thereon;

V.

Imposing a civil money penalty against Defendants pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

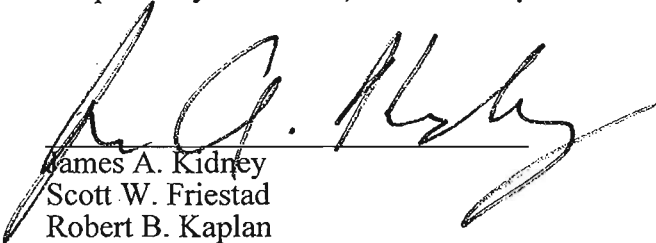
VI.

Granting such other relief as the Court deems appropriate.

PLAINTIFF DEMANDS A JURY

Dated: December 16, 2009

Respectfully submitted,



James A. Kidney
Scott W. Friestad
Robert B. Kaplan
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Anthony S. Kelly

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION