

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60119 / June 16, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2893 / June 16, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13521

In the Matter of

Mitchel S. Guttenberg,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Mitchel S. Guttenberg (“Guttenberg” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these

proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Guttenberg, 44 years old, is a resident of Fort Dix, New Jersey.
2. From August 1999 through March 2007, Guttenberg was a registered representative associated with UBS Securities LLC (“UBS”), a broker-dealer and investment adviser registered with the Commission.
3. On June 2, 2009, a final judgment was entered by consent against Guttenberg, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Guttenberg, et al., Civil Action No. 07 CV 1774, in the United States District Court for the Southern District of New York.
4. The Commission’s complaint alleged that from 2001 through 2006, Guttenberg misappropriated from UBS material, nonpublic information concerning upcoming analyst recommendations, and tipped this confidential information to David Tavdy and Erik Franklin, in exchange for sharing their illicit profits from trading on that information.
5. On February 27, 2008, Guttenberg pled guilty to two counts of conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371, and four counts of securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2, before the United States District Court for the Southern District of New York, in United States v. Mitchel Guttenberg and David Tavdy, Crim. Indictment No. 1:07-CR-141.
6. The counts of the criminal indictment to which Guttenberg pled guilty alleged, inter alia, that Guttenberg misappropriated material, nonpublic information from UBS and unlawfully passed that information to David Tavdy and another coconspirator, and that David Tavdy and this other coconspirator illegally traded using that information and then shared the illegal profits with Guttenberg.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Guttenberg’s Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Guttenberg be, and hereby is barred from association with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary