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17 **UNITED STATES DISTRICT COURT**  
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 SECURITIES AND EXCHANGE  
 20 COMMISSION,  
 21  
 22 Plaintiff,  
 23  
 24 v.  
 25 MARK LOMAN,  
 26  
 27 Defendant.

Case No.

**COMPLAINT**

28 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

**JURISDICTION AND VENUE**

1. The Commission brings this action pursuant to Sections 21(d) and 21A of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d) and 78u-1.

2. This Court has jurisdiction over this action pursuant to Sections 21(d), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1 and 78aa.

1 3. Venue in this District is proper pursuant to Section 27 of the Exchange  
2 Act, 15 U.S.C. § 78aa, because a substantial part of the acts and transactions  
3 constituting the violations alleged in this Complaint occurred within Los Angeles  
4 County.

5 **SUMMARY**

6 4. Defendant Mark Loman, the former Controller and Vice President of  
7 Finance of OSI Systems, Inc. (“OSIS”), a Hawthorne, California based security,  
8 healthcare, and optoelectronics company, secretly used confidential information he  
9 gained in his position to repeatedly and unlawfully trade securities, including OSIS  
10 securities, on the basis of material, non-public information.

11 5. In December 2015, Loman took advantage of his advance knowledge of  
12 confidential information that OSIS would report to the market revenue that was far  
13 short of the market’s expectations to make a series of options trades betting that  
14 OSIS’s stock price would fall. When OSIS announced publicly the disappointing  
15 quarterly financial results a month later, and simultaneously lowered its public annual  
16 forecast, OSIS’s closing price fell by 35% from the previous day’s close.

17 6. Shortly after the public announcement of the lower-than-expected  
18 revenues and earnings for OSIS’s second fiscal 2016 quarter, Loman profitably closed  
19 out his options trades, realizing more than \$300,000 in profits.

20 7. Loman repeated his misuse of confidential information he learned from  
21 OSIS to trade just two months later. In February 2016, Loman learned that OSIS was  
22 in negotiations to acquire American Science and Engineering (“ASEI”). Aware that  
23 the acquisition of ASEI would be at a premium over its then-market price, Loman  
24 bought ASEI stock. When OSIS’s acquisition was announced publicly in June 2016,  
25 Loman immediately sold his shares, realizing more than \$100,000 in profits.

26 8. Defendant Loman, directly or indirectly, made use of the means or  
27 instrumentalities of interstate commerce, and of the mails, and of the facilities of a  
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1 national securities exchange in connection with the transactions, acts, practices and  
2 courses of business alleged herein.

3 **DEFENDANT**

4 9. Mark Loman is 56 years old and resides in Hermosa Beach, California.  
5 From 2006 to 2017, he was the Controller and Vice President of Finance at OSIS. He  
6 is licensed as a CPA in California. In testimony before the Commission's staff, Loman  
7 exercised his Fifth Amendment right against self-incrimination and refused to respond  
8 to any questions concerning the subject matter of this lawsuit.

9 **OTHER RELEVANT ENTITIES AND INDIVIDUALS**

10 10. OSI Systems, Inc. is a Delaware corporation with its principal place of  
11 business in Hawthorne, California. It designs and manufactures security, healthcare  
12 and optoelectronics machines and components. It trades on the New York Stock  
13 Exchange under the ticker symbol OSIS. Its fiscal years run from July 1 of the  
14 previous year to June 30.

15 11. American Science and Engineering, Inc. was a Massachusetts corporation  
16 with its principal place of business in Billerica, Massachusetts. On September 9, 2016,  
17 OSIS acquired it in a negotiated merger in which OSIS paid all cash for ASEI's shares.  
18 Before its acquisition by OSIS, it traded on the NASDAQ under the ticker symbol  
19 ASEI.

20 **FACTUAL ALLEGATIONS**

21 **A. Loman Had Access to Confidential OSIS Information**

22 12. As Controller and Vice President of Finance, Loman had access to OSIS's  
23 confidential financial information. Among other things, Loman had advance  
24 knowledge of OSIS's revenues and earnings, which the company reported quarterly in  
25 scheduled announcements and in required filings with the Commission.

26 13. In particular, as OSIS's Controller, Loman was responsible for compiling  
27 and internally reporting OSIS's confidential financial results. Each month, by the fifth  
28 business day, Loman ensured that the previous month's actual financial results were

1 compiled and internally distributed to the company's executives and finance  
2 employees. Each month, by the eighth business day, as Loman knew, these  
3 confidential financial results were used to generate the company's updated confidential  
4 quarterly and annual financial projections, which were also internally distributed,  
5 including to Loman.

6 14. At the beginning of each fiscal year, OSIS publicly released an annual  
7 forecast of its expected financial results. At the end of each quarter in the fiscal year,  
8 the company publicly released its actual financial results for the quarter. At times, the  
9 company also publicly revised its previously released annual forecast.

#### 10 **B. Loman Had a Duty to Abide By Trading Restrictions**

11 15. As a senior employee of OSIS with access to confidential financial  
12 information, Loman was subject to several restrictions designed to limit his ability to  
13 trade OSIS shares in certain situations, or to trade any securities on the basis of  
14 confidential information he obtained through his employment at OSIS.

15 16. In particular, Loman received OSIS's insider trading policy many times  
16 over the course of his employment, including in the fall of 2015. He also signed a  
17 certificate acknowledging that he had read and would comply with OSIS's insider  
18 trading policy. Loman knew, or was reckless in not knowing, that OSIS's insider  
19 trading policy specifically prohibited:

20 a. Trading on the basis of inside information about OSIS or "any other  
21 company if you learn something...during the course of your relationship  
22 with [OSIS] that might affect the value of the other company's stock."

23 The policy listed several examples of inside information, including:  
24 financial information such as revenues, expenses, earnings, and earnings  
25 estimates, and information about proposed mergers or acquisitions.

26 b. Trading OSIS securities during quarterly standing blackout periods that  
27 began five days before the end of each quarter and continued until two  
28 full business days after the public disclosure of the quarter's financial

1 results (typically, about four weeks later).

- 2 c. Disobeying notifications from OSIS prohibiting certain insiders from
- 3 trading in specified securities during specially imposed blackout periods.
- 4 d. “Speculative trading” in OSIS’s stock. The policy stated that speculative
- 5 trading included trying to profit from short-term movements of the stock
- 6 price.
- 7 e. For senior employees like Loman, trading in OSIS securities or the
- 8 securities of an affiliate company without pre-clearing the trades with the
- 9 company’s Chief Financial Officer or general counsel.
- 10 f. Trading before two full business days after the public disclosure of inside
- 11 information, as defined in the policy.

12 17. OSIS also maintained a “Code of Conduct and Ethics” which prohibited  
13 buying or selling the company’s stock while in possession of non-public information  
14 obtained through OSIS employment that could have a material effect on its business.  
15 Loman was similarly subject to this Code of Conduct and Ethics and received it in  
16 writing upon joining the company.

17 18. OSIS issued stock to certain employees, including Loman, using accounts  
18 that it set up for the employees at a particular brokerage firm. Importantly, Loman’s  
19 account at this brokerage firm was restricted during the company’s standing quarterly  
20 blackout periods, so that he could not trade in OSIS securities.

21 **C. Loman Traded OSIS Securities on the Basis of Confidential Revenue**  
22 **and Earnings Information**

23 19. In August 2015, shortly after the beginning of its 2016 fiscal year, OSIS  
24 publicly announced that it forecasted for that fiscal year revenue of between \$981  
25 million and \$1,020 million, and earnings per diluted share of \$3.75 to \$4.00.

26 20. This public forecast was based on OSIS’s confidential internal projection  
27 that it expected to report revenue of \$1,093 million for the fiscal year, including  
28 revenue for the second quarter of \$241 million.

1           21.     During the first two months of the second quarter of fiscal year 2016  
2 (October and November of 2015), as Loman was aware, OSIS recorded in its books  
3 and records actual revenue that was significantly lower than had been expected. As  
4 each month ended, as Loman also knew, OSIS reduced its internal quarterly projection  
5 for revenue. Thus, by the end of November 2015, Loman knew that OSIS's revenue  
6 for the second fiscal quarter was \$41 million below the amount projected by that point  
7 at the beginning of the fiscal year, and was 16% less than the same period in the prior  
8 year.

9           22.     Because of the materially reduced actual revenues recorded, in early  
10 December 2015, OSIS revised its confidential internal revenue projection for the  
11 second fiscal quarter, from \$241 million to \$218 million. Similarly, OSIS also reduced  
12 its confidential internal revenue projection for the fiscal year, from \$1,093 million to  
13 \$995 million.

14           23.     Loman was aware of these significant reductions in the projected revenue  
15 numbers shortly after the internal projections were prepared.

16           24.     Throughout December 2015, Loman received several written and verbal  
17 updates on OSIS's actual revenue for the last few weeks of the quarter. By December  
18 28, 2015, OSIS executives and finance employees, including Loman, expected that the  
19 company's revenues and earnings were going to fall short of even the substantially  
20 reduced projections it had prepared in early December.

21           25.     Based on this confidential financial information, on December 28, just  
22 three days before the end of the quarter, Loman placed several trades in OSIS  
23 securities which were designed to allow him to profit from a drop in OSIS's stock  
24 price.

25           26.     Thus, on December 28, Loman purchased 100 "put options" on OSIS's  
26 common stock, with a strike price of \$90, and an expiration of February 19, 2016.  
27 These put options gave Loman the right (but not the obligation) to sell OSIS common  
28 stock at \$90 per share, which was then at or near the market price for OSIS's stock.

1 Accordingly, the options were expected to gain value if OSIS's stock fell below that  
2 price before they expired. If the stock did not go below \$90 per share, Loman would  
3 lose the money he spent purchasing the puts, which was approximately \$35,000.

4 27. Also on December 28, Loman sold 100 "call options" on OSIS's common  
5 stock, with a strike price of \$95, and an expiration of February 19, 2016, and 50  
6 additional call options with the same strike price but with an expiration of April 15,  
7 2016. By selling call options, Loman received a premium paid by the purchaser,  
8 which he stood to keep so long as the price remained below the \$95 strike price.  
9 Loman received approximately \$42,000 in premiums for selling the call options.

10 28. On January 27, 2016, OSIS publicly announced its financial results for the  
11 second fiscal quarter, reporting actual revenue of \$197 million, and earnings per  
12 diluted share of \$.01. Simultaneously, OSIS lowered its public forecast for the fiscal  
13 year, predicting that revenue would be between \$900 million and \$945 million and that  
14 earnings per diluted share would be between \$2.95 and \$3.20.

15 29. After the January 27 announcement, the closing price of OSIS's common  
16 stock dropped from approximately \$80 a share at closing on January 26, 2016, to  
17 approximately \$52 a share at closing on January 28, 2016. On February 1, 2016,  
18 Loman sold all of the put options he had acquired on December 28, 2015. Loman  
19 permitted the call options to expire. Altogether, Loman realized more than \$300,000  
20 in profits on these trades.

21 30. Loman's trades were based on material non-public information, were  
22 speculative trades as they involved profiting from short-term movements in OSIS's  
23 stock price, and were not pre-cleared by OSIS's Chief Financial Officer or general  
24 counsel, contrary to the company's insider trading policy. In addition, Loman made  
25 these trades during a blackout period. He was able to do so because he did not trade in  
26 the brokerage account OSIS set up for him, which was restricted during the blackout  
27 period, but in his personal brokerage account.

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**D. Loman Traded ASEI Securities on the Basis of Confidential Information**

31. By February 16, 2016, Loman understood that OSIS was in negotiations to acquire another publicly traded company, ASEI. On that date, Loman discussed the acquisition with OSIS's CFO, who also emailed Loman a draft letter of intent. The letter of intent described a price range at which OSIS would pay for ASEI's securities, between \$32 and \$38 a share. The letter also explicitly stated that the merger negotiations between the companies were confidential and that the companies expected to enter into a non-disclosure agreement.

32. Throughout the remainder of February 2016, the negotiations between the companies progressed. Both OSIS's and ASEI's respective boards of directors recommended that the companies pursue merger negotiations; OSIS actively worked with its investment bankers on terms of the potential merger; and a non-disclosure agreement was executed. Based on these developments, by the morning of March 3, 2016, OSIS was serious about acquiring ASEI.

33. On the morning of March 3, 2016, at 9:08 a.m., Loman placed an order in his personal brokerage account to buy 10,000 shares of ASEI at \$24.91 a share, which was below the proposed price included in the draft letter of intent that Loman earlier had received.

34. On April 28, 2016, the day before OSIS's standing quarterly blackout period for trading in OSIS securities ended, OSIS's general counsel's office sent a special blackout notification to Loman and other insiders, stating that they were not allowed to "buy, sell or otherwise transact in any OSIS or ASEI stock" until further notice.

35. On June 21, 2016, OSIS publicly announced that it would acquire ASEI at \$37 a share. After the announcement, the closing price of ASEI's common stock rose from \$32.34 a share at closing on June 20, 2016 to \$36.96 a share at closing on June 23, 2016, a gain of approximately 14%.



1           36. In the early morning of June 21, shortly after the announcement, Loman  
2 placed an order to sell all of his ASEI shares at \$37 per share, which was fully  
3 executed the next day. As a result, Loman realized more than \$100,000 in profits from  
4 these trades.

5           37. Loman's trades in ASEI shares were contrary to OSIS's insider trading  
6 policy. His purchase of the shares was based on material non-public information and  
7 he did not pre-clear them. He also failed to pre-clear his sale of the shares and made  
8 the sales during a specifically identified blackout period, less than two days after the  
9 announcement of the acquisition.

#### 10           **E. Loman Acted with Scienter**

11           38. In trading OSIS securities in advance of the second fiscal 2016 quarterly  
12 earnings announcement, as described above, Loman knew, or was reckless in not  
13 knowing, that the non-public information regarding OSIS's revenue and earnings was  
14 material and confidential to OSIS.

15           39. In trading in ASEI securities in advance of OSIS's unannounced  
16 acquisition, as described above, Loman knew, or was reckless in not knowing, that the  
17 non-public information regarding the potential acquisition of ASEI by OSIS was  
18 material and confidential to OSIS.

19           40. Loman knew, or was reckless in not knowing, that he was not permitted to  
20 trade on the basis of material non-public information he obtained in the course of his  
21 employment, including trading in the securities of OSIS in advance of an earnings  
22 announcement, or trading in ASEI securities in advance of the acquisition  
23 announcement.

24           41. At the time of his trading in OSIS and ASEI securities described above,  
25 Loman owed OSIS a fiduciary duty, or an obligation arising from a similar relationship  
26 of trust or confidence, to keep confidential material, non-public information regarding  
27 OSIS, including its actual and projected revenue and earnings and its potential  
28 acquisition of ASEI.

1 42. Loman also knew, or was reckless in not knowing, that he owed OSIS a  
2 fiduciary duty, or an obligation arising from a similar relationship of trust or  
3 confidence, to keep this information confidential. In particular, Loman was aware of  
4 several restrictions prohibiting him from trading on the basis of confidential OSIS  
5 information, including but not limited to OSIS's insider trading policy, its Code of  
6 Conduct and Ethics, and the company's trading blackout periods.

7 43. Loman also acted deceptively and sought to conceal his trading, further  
8 establishing his deceptive intent in trading on the basis of material non-public  
9 information. Thus, Loman did not use the brokerage account that OSIS set up for him,  
10 in which trading was restricted during standing blackout periods, to place his OSIS  
11 trades ahead of the second quarter 2016 earnings announcement or his ASEI trades in  
12 advance of the OSIS acquisition announcement.

13 44. Instead, Loman concealed his trading, and evaded the restrictions in the  
14 brokerage account that OSIS set up for him, by placing his trades through his personal  
15 brokerage account. Loman also avoided scrutiny by failing to seek advance clearance  
16 for his trading from the appropriate persons at OSIS.

### 17 **CLAIM FOR RELIEF**

#### 18 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

19 45. Paragraphs 1 through 44 are hereby re-alleged and are incorporated herein  
20 by reference.

21 46. Defendant Loman, with scienter, in connection with the purchase or sale  
22 of securities as set forth above, directly or indirectly:

- 23 a. employed devices, schemes, or artifices to defraud;
  - 24 b. made untrue statements of material facts and omitted to state material  
25 facts necessary in order to make the statements made, in light of the  
26 circumstances under which they were made, not misleading; and
- 27  
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1 c. engaged in acts, practices, and courses of business which operated or  
2 would operate as a fraud or deceit upon other persons, including  
3 purchasers and sellers of securities;  
4 by the use of the means or instrumentalities of interstate commerce, and of the mails,  
5 and the facilities of a national securities exchange.

6 47. By reason of the foregoing, Defendant Loman violated, and unless  
7 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15  
8 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully requests that this Court enter a  
11 judgment:

12 **I.**

13 Permanently restraining and enjoining Defendant Loman, his officers, agents,  
14 servants, employees, and attorneys, and those persons in active concert or participation  
15 with him who receive actual notice of the injunction by personal service or otherwise,  
16 from directly or indirectly violating Section 10(b) of the Exchange Act, 15 U.S.C.  
17 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 **II.**

19 Prohibiting Defendant Loman from acting as an officer or director of any issuer  
20 that has a class of securities registered pursuant to Section 12 of the Exchange Act,  
21 15 U.S.C. § 78l or that is required to file reports pursuant to Section 15(d) of the  
22 Exchange Act, 15 U.S.C. § 78o(d).

23 **III.**

24 Ordering Defendant Loman to disgorge, with prejudgment interest, all illicit  
25 trading profits, losses avoided, or other ill-gotten gains received by him, directly or  
26 indirectly, as a result of the conduct alleged herein.  
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**IV.**

Ordering Defendant Loman to pay civil monetary penalties, pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

**V.**

Granting such other relief as this Court may deem just and appropriate.

Dated: July 18, 2019

/s/ Ruth Hawley  
Ruth Hawley  
Attorney for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION