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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY**

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WESTERN DISTRICT OF KY

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

**DEVIN A. DANEHY,**

**Defendant.**

**COMPLAINT**

**CASE NO. 3:01CV-555-H**

Plaintiff, Securities and Exchange Commission (the "Commission") alleges as follows:

**NATURE OF THE PROCEEDING**

1. The Commission brings this action against Defendant Devin A. Danehy ("Danehy") for insider trading in call options of Tricon Global Restaurants, Inc. ("Tricon"), located in Louisville, Kentucky. From on or about July 22, 1998, through on or about October 9, 1998, Danehy, who was then a manager in the Business Analysis Group at Tricon, purchased 210 Tricon call options while in possession of material, non-public information about Tricon's financial results and projected financial results for the third and fourth quarters of 1998. When Tricon made public announcements about its financial results on August 19, 1998, and October 15, 1998, its stock price increased. By purchasing Tricon call options while in possession of material, non-public information, Danehy breached duties he owed to his employer, Tricon, and gained total profits of approximately \$110,301.

2. By virtue of the conduct described in this Complaint, Danehy, directly and indirectly, engaged in acts, practices, and courses of business in violation of 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.

3. The Commission brings this action, pursuant to Sections 21(d) and (e) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and (e) and 78u-1(a)] for an order permanently restraining and enjoining Danehy, ordering disgorgement of unlawful profits, imposing civil penalties and for other relief.

4. Danehy, unless restrained and enjoined, will continue to engage in acts, practices, and courses of business as set forth in this Complaint, or in acts, practices and courses of business of similar purport and object.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], this Court has venue over this action as, at all relevant times, Danehy resided in this district and the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Western District of Kentucky.

6. Danehy, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business alleged in this Complaint.

## **DEFENDANT**

7. Danehy, age 34, resided in Louisville, Kentucky at the time of the alleged conduct, and currently resides in Orlando, Florida. From January 1998 to October 1999, Danehy was a manager or director in the Business Analysis Group at Tricon. Prior to January 1998, Danehy worked in the sales department of the former owner of Tricon's businesses. In October 1999, Danehy resigned from Tricon.

## **FACTS**

### **Danehy's Knowledge of Tricon's Internal Financial Results and Forecasts**

8. In October 1997, Tricon's former owner spun off Tricon. Tricon is comprised of four operating companies: KFC, Pizza Hut, Taco Bell and Tricon International. Tricon's options are listed on the Chicago Board Options Exchange and its stock is listed on the New York Stock Exchange.

9. In January 1998, Danehy became a manager in the Business Analysis Group at Tricon. From in or about January 1998 through October 1999, Danehy worked with three other individuals in the Business Analysis Group to compile Tricon's historical financial results and analyze and forecast future results for Tricon's senior management and the Board of Directors.

10. From at least July 1998 through October 1998, Danehy's responsibilities included tracking the historical financial results of Tricon's four operating companies, and obtaining forecast information from Pizza Hut and KFC for compilation. In addition, Danehy prepared two reports for Tricon's senior management: 1) the "Weekly Business Update," a

weekly update of the sales of all domestic and some international Tricon-owned restaurants and 2) the "Preliminary Scorecard," a summary of Tricon's operations for the most recent four-week period.

11. The Weekly Business Update and Preliminary Scorecard reports included, among other things, Tricon's most recent company, domestic same store sales results. During July 1998 through October 1998, these reports reflected that the most recent same store sales results were beating the prior year's same store sales results.

12. From July 1998 through October 1998, the Business Analysis Group, including Danehy, used the compiled historical and forecast data, including data from the Weekly Business Update and the Preliminary Scorecard, to prepare two internal company documents: (1) a report to Tricon's senior management, internally referred to as the YUM NUMZ; and (2) the Financial Review, a report to Tricon's Board of Directors. The purposes of these two internal Tricon documents were to inform senior management and the Board of Directors about Tricon's results of operations for the previous four-week period and to forecast Tricon's financial results for the third and fourth quarters of 1998.

13. From July 1998 through October 1998, the Business Analysis Group, including Danehy, incorporated information contained in the YUM NUMZ in the Financial Reviews they prepared for the Board of Directors.

14. From July 1998 through October 1998, Danehy knew that Tricon's earnings announcements would be based on the information contained in the YUM NUMZ and

Financial Reviews. During this time, Danehy also knew the dates on which Tricon's quarterly earnings releases were to be publicly announced.

15. From July 1998 through October 1998, the YUM NUMZ, Financial Reviews, Weekly Business Update, and Preliminary Scorecard frequently stated "Confidential," "Do not circulate," and/or "Do not copy" on the front page.

#### The July 22nd Purchases

16. On or before July 22, 1998, Danehy knew Tricon's internal forecasts of Tricon's financial results for the third quarter of 1998, and for year-end 1998 as reflected in: (1) a memorandum to Tricon's Board of Directors, dated July 16, 1998; and (2) the Financial Review, dated July 21, 1998.

17. The memorandum to the Board of Directors dated July 16, 1998, forecasted Tricon's 1998 year-end operating earnings per share ("EPS") to be \$1.61, exceeding Wall Street Analysts' (the "Street") expectation of \$1.55, and Tricon's 1998 year-end fully diluted EPS to be \$2.29, beating the Street expectation of \$1.95. The memorandum also stated that Tricon expected a "very strong" third quarter in 1998.

18. The Financial Review, dated July 21, 1998, forecasted Tricon's operating EPS for the third quarter of 1998 to be \$0.46, while the Street expectation was \$0.45, and Tricon's fully diluted EPS for the third quarter of 1998 to be \$0.72, exceeding the Street expectation of \$0.56. Furthermore, the Financial Review indicated that "EPS growth is heavily skewed to the second half" of 1998.

19. On or about July 22, 1998, Danehy purchased 46 January 030 call options in Tricon for \$6.625 each (at a total cost of \$30,665.43, including commissions) and 20 August 035 Tricon call options for \$1.25 each (at a total cost of \$2,572.25, including commissions), while in possession of material, non-public information concerning Tricon's financial results.

**The August 17th and August 18th Purchases**

20. On or about August 17, 1998, Danehy knew Tricon's internal financial results and Tricon's forecasts of its financial results included in the YUM NUMZ, dated August 17, 1998. The YUM NUMZ raised the internal forecasts for the third quarter 1998 operating EPS to \$0.53 and the 1998 year-end operating EPS to \$1.69, exceeding Street expectations of \$0.41 and \$1.54, respectively. In addition, the YUM NUMZ increased internal forecasts for fully diluted EPS for the third quarter of 1998 to \$0.81, and for fully diluted EPS for the full year of 1998 to \$2.44, exceeding Street expectations of \$0.66 and \$2.22, respectively.

21. On or about August 17, 1998, Defendant Danehy purchased 30 January 030 Tricon call options for \$5.00 each (at a total cost of \$15,115.20, including commissions) and 28 September 030 Tricon call options at \$3.50 each (at a total cost of \$9,901.92, including commissions), while in possession of material, non-public information concerning Tricon's financial results.

22. On or about August 18, 1998, Defendant Danehy purchased 5 August 030 Tricon call options for \$1.8125 each (at a total cost of \$943.05, including commissions) and 27 August 035 Tricon call options for \$0.1875 each (at a total cost of \$551.21, including

commissions), while in possession of material, non-public information concerning Tricon's financial results.

23. On August 19, 1998, Tricon publicly announced expected strong operating and financial results for the upcoming third quarter. The Tricon release stated that the company expected its "operating profit to be up about 30 percent, operating EPS to be up over 70 percent while [fully diluted] EPS, which includes facility action net gains, should be up over 50 percent." On August 19, 1998, Tricon's stock price rose \$3.875 per share to close at \$36.375, up 11.9%.

24. On or about August 19, 1998, Danehy sold all of his August call options: 5 August 030 Tricon call options for \$3.50 each; and 47 August 035 Tricon call options for \$1.875 each. Danehy realized a profit of \$6,354.41 from the sale of these August Tricon call options.

25. On or about August 20, 1998, Danehy sold all of his September call options: 28 September 030 Tricon call options for \$9.00 each. Danehy realized a profit of \$15,157.56 from the sale of these September Tricon call options.

#### **The October 8th and October 9th Purchases**

26. On or about October 8, 1998, Danehy knew Tricon's internal financial results and Tricon's internal forecasts of its financial results that were included in the YUM NUMZ, dated October 14, 1998. This YUM NUMZ stated that the operating EPS for the third quarter of 1998 was \$0.58, higher than the Street expectation of \$0.50, and fully diluted EPS for the third quarter of 1998 was \$0.82, exceeding the Street expectation of \$0.77.

27. On or about October 8, 1998, Danehy purchased 20 November 040 for \$0.3125 each (at a total cost of \$661.30, including commissions), while in possession of material, non-public information concerning Tricon's financial results.

28. On or about October 9, 1998, Danehy purchased 34 November 040 for \$0.5625 each (at a total cost of \$1,989.90, including commissions), while in possession of material, non-public information concerning Tricon's financial results.

29. On October 15, 1998, Tricon publicly reported its third quarter earnings results in a press release entitled – "Tricon announces third quarter results. Earnings up 60 percent to \$128 million, or \$0.82 per diluted share – beating expectations." The earnings announced were the same as contained in the YUM NUMZ, dated October 14, 1998: 1998 third quarter operating EPS of \$0.58 and 1998 third quarter fully diluted EPS of \$0.82. On October 15, 1998, Tricon's stock price rose \$0.6875 per share to close at \$39.3125.

30. On or about October 19, 1998, Danehy sold all of his November Tricon call options: 54 November 040 Tricon call options for \$3.50 each. Danehy realized a profit of \$16,123.61 from the sale of these November Tricon call options.

31. On or about November 13, 1998, Danehy sold all of his January call options: 76 January 030 Tricon call options for \$15.625 each. Danehy realized a profit of \$72,664.59 from the sale of these January Tricon call options.

**Danehy's Knowledge of Tricon's Insider Trading Policies**

32. At all relevant times, Tricon had an insider trading policy that expressly prohibited employees from trading in Tricon's securities while in possession of material, non-



public information. The policy referred to “a significant upward or downward revision of earnings forecasts” as an example of information that was material. Tricon’s insider trading policy also prohibited any employee from trading in Tricon options.

33. Danehy was aware of Tricon’s prohibition of insider trading during the entire course of his employment at Tricon. As an employee of the former owner of Tricon’s businesses, Danehy signed the former owner’s Code of Conduct at the end of 1997. The Code of Conduct of the former owner contained a similar prohibition against trading in its securities by employees while in possession of material, non-public information and the same earnings forecast example as Tricon in its policy against insider trading. In addition, Danehy’s supervisor reminded the Business Analysis Group, including Danehy, during the relevant period that they were considered insiders for the purposes of the company’s insider trading policy.

#### **CLAIM**

#### **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] Promulgated Thereunder**

34. Paragraphs 1 through 33 are hereby realleged and incorporated by reference herein.

35. From on or about July 22, 1998, through on or about October 9, 1998, Danehy, in connection with the purchase and sale of Tricon securities, namely call options, 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 purchasers and sellers of such securities. As part of his conduct, Danehy, in breach of his fiduciary duty to Tricon and its shareholders arising from his position of trust and confidence, purchased Tricon securities while in possession of material, non-public information.

36. Danehy knew or was reckless in not knowing the facts and circumstances described in paragraphs 34 and 35 above.

37. By reason of the activities described in paragraphs 34 through 36 above, Danehy violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

#### **PRAYER FOR RELIEF**

**THEREFORE**, the Commission respectfully requests that the Court:

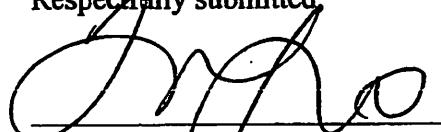
- (a) find that Danehy violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;
- (b) permanently enjoin Danehy from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;
- (c) order Danehy to pay to the registry of this Court disgorgement of his ill-gotten gains plus prejudgment interest from the dates of his gains to the date of final judgment in this matter;

(d) order Danehy to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

(e) retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and

(f) order such other relief as the Court may deem appropriate.

Respectfully submitted,



Jane E. Jarcho  
James A. Davidson  
Tracy W. Lo

Attorneys for Plaintiff  
Securities and Exchange Commission  
500 West Madison Street, Suite 1400  
Chicago, Illinois 60661  
Telephone: (312) 353-7390

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