

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 72021 / April 25, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15854**

**In the Matter of**  
  
**ODED GABAY,**  
  
**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Oded Gabay (“Gabay” 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, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves insider trading by Gabay in the securities of GSI Commerce, Inc. ("GSI") in advance of the March 28, 2011 announcement that eBay, Inc. ("EBAY") had agreed to acquire GSI.

2. On the weekend of March 26 and 27, 2011, Gabay's wife learned material nonpublic information about the acquisition of GSI from an individual with whom she had a relationship of trust and confidence ("Individual A"). Gabay's wife misappropriated the material nonpublic information about the acquisition of GSI in breach of the duty of trust and confidence she owed to Individual A when she disclosed the information to her husband, Gabay. Gabay knew or should have known that his wife had unlawfully misappropriated the material nonpublic information in breach of her duty of trust and confidence owed to Individual A.

3. On or about March 28, 2011, Gabay traded on the basis of the material nonpublic information he had received. As a result of his improper use of the insider information, Gabay generated trading profits of \$23,615.

4. On or about March 27, 2011, Gabay shared the material nonpublic information he had received with his friend, Individual B.

5. On March 28, 2011, Individual B traded on the basis of the material nonpublic information he had received from Gabay. As a result of his improper use of the insider information provided by Gabay, Individual B generated trading profits of \$20,739.75.

6. By virtue of his conduct, Gabay violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### Respondent

7. *Oded Gabay*, age 39 resides in New York, NY. During the relevant time period, Gabay was a hairdresser and co-owner of two Lovella hair salons in New York City.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

### **Other Relevant Parties**

8. *GSI Commerce, Inc.*, an e-commerce company, was during the relevant time period headquartered in King of Prussia, PA. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by EBAY. GSI's common stock traded on the NASDAQ (former ticker symbol GSIC) and options on GSI's stock traded on multiple U.S. options exchanges.

9. *Individual A* resides in the Commonwealth of Pennsylvania. Individual A was married to a GSI employee and resided in Pennsylvania during the relevant time period.

10. *Individual B* resides in the State of New York. During the relevant time period, Individual B operated family businesses in the diamond industry.

### **Facts**

11. Individual A first learned of the possible acquisition of GSI by EBAY from her husband, a GSI employee who possessed material nonpublic information concerning GSI's operations and management, on or about January 30, 2011. Individual A knew that the information about the possible acquisition of GSI by EBAY was material and nonpublic, and that she had an obligation to maintain the confidentiality of the information.

12. Discussions continued between representatives of GSI and EBAY throughout February and March 2011. Negotiations culminated in the execution of a final agreement in the early morning of March 28, 2011.

13. Individual A and Gabay's wife, who had been friends since Gabay's wife was in college, had a long-standing relationship of trust and confidence. Through the years of their friendship, the two would often share confidences about their children, their marriages and their personal lives.

14. Gabay and his wife were friends with Individual A and her husband for several years prior to 2011 and knew of GSI. Gabay purchased GSI shares in January and early March 2011.

15. On the weekend of March 26 and 27, 2011, Gabay's wife and Individual A met in New York City. Gabay's wife and Individual A brought their children and discussed their personal lives including the reasons why Individual A was in New York City, which involved negotiations over the acquisition of GSI. Individual A told Gabay's wife about the upcoming acquisition of GSI and that news of the acquisition would be publicly announced on Monday, March 28, 2011. Gabay's wife understood that the information was material nonpublic information and that Individual A had an expectation that she would not disclose the information to others based on their close friendship and history of sharing confidences. Gabay's wife owed Individual A a duty of trust and

confidence to keep confidential the material nonpublic information that she learned from her conversation with Individual A.

16. Following her meeting with Individual A, Gabay's wife shared the material nonpublic information regarding the upcoming GSI acquisition with Gabay.

17. After receiving the material nonpublic information about the upcoming acquisition of GSI, Gabay spoke with his friend, Individual B. Gabay told Individual B that his wife had learned from her friend, who was married to a GSI insider, about the upcoming acquisition of GSI and that the deal would be announced on Monday. Gabay and Individual B discussed whether they should buy GSI stock based on this information.

18. On March 28, 2011, Individual B purchased 2,200 GSI shares in pre-market trading at an average price of \$19.88 per share, for a total price of \$43,727.95. Individual B purchased these shares based on the information he received from Gabay. Prior to March 28, 2011, Individual B had never purchased GSI shares.

19. That same morning, March 28, 2011, Gabay purchased 2,500 GSI shares in pre-market trading at a price of \$19.98 for a total purchase price of \$49,960. Gabay purchased these shares based on the misappropriated material nonpublic information that his wife had communicated to him about the upcoming acquisition of GSI.

20. Early in the morning on Monday, March 28, 2011, GSI and EBAY executed the merger agreement. NASDAQ halted trading in GSI shares at 9:22 a.m. that morning based on pending news. At 10:05 a.m., GSI and EBAY announced that the companies had entered into a definitive agreement to merge, whereby EBAY would acquire GSI for \$29.25 per share, or a total consideration of approximately \$2.4 billion.

21. The market reacted significantly to the news. The closing last sale price of GSI on the day of the announcement was \$29.20, an increase of approximately 50.6% over the prior day's close. Trading volume on the day of the announcement was 42.6 million shares, compared to GSI's historical average daily volume of approximately 1.1 million shares.

22. On March 28, 2011, Individual B sold his GSI shares for \$29.30 per share, garnering profits of \$20,739.75.

23. On March 28, 2011, Gabay sold the 2,500 GSI shares he had purchased earlier that day and garnered \$23,615 in profits.

24. Gabay's purchase of GSI shares on March 28, 2011 was on the basis of material nonpublic information about the upcoming acquisition of GSI unlawfully misappropriated from Individual A. Gabay knew or should have known that his wife had disclosed the material nonpublic information in breach of her duty of trust and confidence to Individual A.

25. The purchase of GSI shares by Individual B on March 28, 2011 was also on the basis of material nonpublic information about the upcoming acquisition of GSI, unlawfully tipped by Gabay. Gabay intentionally tipped that information to Individual B and obtained a personal benefit.

26. As a result of his conduct described above, Gabay violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

### **Undertakings**

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings and the cooperation afforded the Commission staff.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall pay to the Securities and Exchange Commission disgorgement of \$23,615, prejudgment interest of \$1,207.37, and a civil money penalty of \$22,177 for a total of \$46,999.37. Payment shall be made within 10 days of the entry of this Order. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Oded Gabay as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$22,177 based upon his cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to Respondent, petition the Commission to reopen this matter and seek an order directing that Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Jill M. Peterson  
Assistant Secretary