

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID R. SLAINE,

Defendant.

COMPLAINT

Civil Action No.

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY

1. This case involves insider trading by David R. Slaine, a former hedge fund portfolio manager at DSJ International Resources Ltd. (d/b/a "Chelsey Capital"). In 2002, Slaine used inside information tipped by Mitchel S. Guttenberg, a former executive at UBS Securities LLC ("UBS"), to trade ahead of upcoming UBS analyst recommendations for Chelsey Capital and in his personal brokerage account. Slaine's personal profits from this illicit scheme totaled more than \$500,000.

2. By virtue of his conduct alleged herein, Slaine violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]. Unless enjoined, Slaine is likely to commit such violations again in the future.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Securities Act Sections 20(b), 20(d), and 22(a) [15 U.S.C. §§ 77t(b), (d), and 77v(a)] and Exchange Act Sections 21(d)(1), 21(e), 21A, and 27 [15 U.S.C. §§ 78u(d)(1), (e), 78u-1, and 78aa]. Slaine, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails in connection with the conduct alleged herein.

4. Venue is proper because certain acts or transactions constituting the violations occurred within this judicial district.

DEFENDANT

5. **David R. Slaine**, age 50, resides in New York, New York. In 2002, Slaine was a portfolio manager at Chelsey Capital in New York, New York.

OTHER RELEVANT PERSONS AND ENTITY

6. **Mitchel S. Guttenberg**, age 44, is currently serving a 78 month prison sentence after being convicted for tipping material, nonpublic information concerning upcoming UBS analyst recommendations. During the relevant time period, Guttenberg was a registered representative at UBS Securities LLC, and was an executive director and institutional client manager in the firm's equity research department.

7. **Erik R. Franklin**, age 40, resides in Fort Lee, New Jersey. At various times from 2001 to 2007, Franklin was a portfolio manager for Q Capital Investment Partners, LP, a portfolio manager for Lyford Cay Capital, LP, and an analyst for Chelsey Capital.

8. **DSJ International Resources Ltd.** (d/b/a "Chelsey Capital") is a New York corporation with offices in New York, New York. During the relevant time period, Chelsey Capital operated as a private hedge fund.

FACTS

9. Until his arrest in 2007, Mitchel S. Guttenberg was a registered representative at UBS, and was an executive director and institutional client manager in UBS's equity research department. As part of his duties at UBS, Guttenberg served on UBS's Investment Review Committee ("IRC"), which reviewed and approved UBS analyst recommendations, including coverage initiations, upgrades and downgrades, and other UBS analyst recommendation changes, before they were issued and publicly disseminated. From 2001 to 2007, Guttenberg was a member of the IRC.

10. Information concerning upcoming UBS analyst recommendations is valuable and material, nonpublic information. Once announced, a UBS analyst recommendation often affects the market price of the stock that is the subject of the recommendation. A UBS analyst upgrade on a stock, for example, typically will result in an increase in the stock price, while a downgrade typically will result in a decrease in the stock price. Between at least 2001 and January 2003, UBS's equity rating system included five ratings -- "Strong Buy," "Buy," "Hold," "Reduce," and "Sell." A reasonable investor would consider information concerning an upcoming UBS analyst recommendation important to his or her investment decision, and a significant alteration of the total mix of information available to the public concerning the stock that is the subject of the recommendation.

11. From 2001 to 2007, Guttenberg was on UBS's IRC, and in that capacity received material, nonpublic information concerning upcoming UBS analyst recommendations. As an employee of UBS, Guttenberg owed a fiduciary or other duty of trust and confidence to UBS to keep that information confidential and not disclose or

personally use that information. UBS's equity research manual specifically provided that:

The distribution of pending research, whether verbally or otherwise, to persons outside the Research Department prior to its issuance by the Research Department is prohibited by firm policy, and may subject the Firm to civil as well as regulatory liability.

Knowledge of a pending recommendation or change in opinion or estimates is considered to be 'market-sensitive information.' Pending initial recommendations, price target, estimate or opinion changes, and decisions to issue research reports or comments may not be disclosed by any means to anyone, either inside or outside of the Firm, until the information has been appropriately disseminated.

12. From 2001 through 2006, in breach of his duty to UBS, Guttenberg provided Franklin with material, nonpublic information concerning upcoming UBS analyst recommendations in exchange for cash kickbacks from Franklin's trading profits.

13. In 2002, Franklin worked as an analyst for Chelsey Capital, a hedge fund where he had previously worked as a portfolio manager. While working at Chelsey Capital in 2002, Franklin tipped material, nonpublic information concerning upcoming UBS analyst recommendations to Slaine and another portfolio manager at Chelsey Capital. Slaine knew that Franklin had a source at UBS who provided Franklin this material, nonpublic information. Slaine knew, or should have known, that this information was being tipped in breach of a duty to UBS.

14. In 2002, Slaine used this material, nonpublic information concerning upcoming UBS analyst recommendations to purchase and sell securities for Chelsey Capital and in his personal brokerage account.

Examples of Slaine's Illegal Trading

15. On May 22, 2002, while in possession of material, nonpublic information concerning an upcoming UBS downgrade on Principal Financial Group, Inc. ("Principal Financial"), Slaine sold short 15,000 shares of Principal Financial in his personal account. Generally, investors who sell short believe that the price of the stock will fall. When selling short, an investor borrows stock, and if the price of that stock subsequently decreases, the investor can purchase the stock at the lower price to make a profit. Before the market opened the next trading day, May 23, 2002, UBS publicly announced it was downgrading its recommendation on Principal Financial stock from Buy to Hold. After the public announcement of the UBS downgrade, the price of Principal Financial stock decreased, and Slaine covered his short position by purchasing stock at the decreased price realizing illicit profits of \$10,821.

16. On August 14, 2002, while in possession of material, nonpublic information concerning an upcoming UBS upgrade of Cell Therapeutics, Inc. ("Cell Therapeutics"), Slaine purchased 15,600 shares of Cell Therapeutics in his personal account. Before the market opened the next trading day, August 15, 2002, UBS publicly announced it was upgrading its recommendation on Cell Therapeutics stock from Buy to Strong Buy. After the public announcement of the UBS upgrade, the price of Cell Therapeutics stock increased, and Slaine sold his Cell Therapeutics stock realizing illicit profits of \$18,539.

17. On November 7, 2002, while in possession of material, nonpublic information concerning an upcoming UBS downgrade of Mercury Interactive Corp. ("Mercury"), Slaine sold short 50,000 shares of Mercury in his personal account. Before the market opened the next trading day, November 8, 2002, UBS publicly announced it

was downgrading its recommendation on Mercury from Buy to Hold. After the public announcement of the UBS downgrade, the price of Mercury stock decreased, and Slaine covered his short position by purchasing stock at the decreased price realizing illicit profits of \$42,985.

18. In 2002, Slaine made more than twenty trades in his personal account based on the UBS tips, realizing more than \$500,000 in illegal profits.

FIRST CLAIM

(Insider Trading in the Offer or Sale of Securities)

(Violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)])

19. Paragraphs 1 through 18 are realleged and incorporated by reference.

20. As described above, Slaine engaged in an illegal insider trading scheme in which he used material, nonpublic information concerning upcoming UBS analyst recommendations to sell securities.

21. By reason of the conduct described above, Slaine, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or omissions to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

22. By reason of the conduct described above, Slaine violated Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

SECOND CLAIM

(Insider Trading in Connection with the Purchase or Sale of Securities)

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

23. Paragraphs 1 through 22 are realleged and incorporated by reference.

24. As described above, Slaine engaged in an illegal insider trading scheme in which he used material, nonpublic information concerning upcoming UBS analyst recommendations to purchase or sell securities.

25. By reason of the conduct described above, Slaine, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

26. By reason of the conduct described above, Slaine violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

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

- A. permanently enjoining Slaine from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];
- B. ordering Slaine to disgorge, with prejudgment interest, all of his personal illicit profits as a result of the conduct alleged in this Complaint;
- C. ordering Slaine to pay civil monetary penalties, not to exceed three times his personal illicit profits, pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1];
and
- D. granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



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