



January 2010, Holley tipped six of his friends, relatives, and employees inside information about an impending acquisition of HDI by another company. Although Holley owed a fiduciary duty to HDI and its shareholders to maintain the confidence of the inside information, he nevertheless provided the information to others with the intent that they purchase HDI stock on the basis of his tips. Each of these individuals subsequently purchased HDI stock on the basis of the inside information from Holley.

2. On February 3, 2010, HDI publicly announced that it had signed a merger agreement with Nipro Corporation (“Nipro”) whereby Nipro would acquire all of HDI’s outstanding common stock in a tender offer for \$11.50 per share. The announcement caused an eighty-nine percent increase in the price of HDI’s common stock.

3. Following the merger announcement, Holley’s tippees sold their HDI shares, realizing total illicit profits exceeding \$250,000. Specifically:

a. Holley tipped his friends and business associates Defendants Dudas and Iamnaita, who purchased HDI stock in a joint account on the basis of the inside information from Holley, realizing profits of approximately \$90,120.

b. Holley tipped a friend, Trader 1, who purchased HDI stock on the basis of the inside information from Holley, realizing a profit of approximately \$10,450.

c. Holley tipped another friend, Trader 2, who purchased HDI stock on the basis of the inside information from Holley, realizing a profit of approximately \$26,700.

d. Holley tipped his relative, Trader 3, who purchased HDI stock on the basis of the inside information from Holley, realizing a profit of approximately \$66,100.

e. Holley tipped an employee of a company owned by Holley, Trader 4, who purchased HDI stock on the basis of the inside information from Holley, realizing a profit of approximately \$67,910.

4. In addition to tipping, Holley provided at least Traders 3 and 4 with a cover story, giving them copies of analyst reports on HDI and telling them that they should use the reports to justify their illicit trading on the basis of his tips.

5. By engaging in the trading scheme describe herein, Defendants violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

6. By this action, the Commission seeks: (a) to enjoin Defendants from further violating the securities laws in the future; (b) to compel the disgorgement of each Defendant’s unlawful profits with prejudgment interest; (c) to impose civil monetary penalties on each Defendant; and (d) to prohibit Holley from serving as an officer or director under Section 21(d)(2) [15 U.S.C. § 78u(d)(2)] of the Exchange Act.

### **JURISDICTION AND VENUE**

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

8. Venue is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations occurred in this district.

9. Defendants, directly or indirectly, made use of the means or instruments of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

## **DEFENDANTS**

10. Defendant George H. Holley, age 70, resides in Norwalk, Connecticut. From 1985 until March 2010, Holley was the Chairman of the Board of Directors of HDI. Holley is also the majority owner and co-director of Stonescapes Co., Ltd., an artificial stonescaping company located in Chiang-Mai, Thailand, and the owner of U.S. Signs & Fabrication Corp., a signage wholesaler located in Trumbull, Connecticut.

11. Defendant Steven V. Dudas, age 54, resides in Pittstown, New Jersey, and at the time of the activities at issue, resided in Flemington, New Jersey. Dudas is a licensed CPA and has been Holley's personal accountant and tax planner for at least the last ten years. In 2009 and 2010, Dudas and Holley had regular contact by e-mail and telephone.

12. Defendant Phairot Iamnaita, age 28, is a citizen of Thailand, and is not a citizen of the United States. During the relevant time, Iamnaita and Holley were close personal friends having regular contact and travelling together extensively in the United States, including during January 2010.

## **RELEVANT ENTITIES**

13. Home Diagnostics, Inc. was a Delaware corporation with its principal place of business in Fort Lauderdale, Florida. HDI manufactured and marketed blood glucose monitoring systems and disposable supplies for diabetics. Prior to March 12, 2010, HDI was traded on NASDAQ under the symbol "HDIX." On February 3, 2010, HDI announced a merger agreement with Nipro whereby Nipro would acquire HDI via tender offer. On March 15, 2010, HDI merged with a wholly owned subsidiary of Nipro.

14. Nipro Corporation is a Japanese company that manufactures and distributes medical devices and pharmaceutical products. Nipro's stock is traded on the Tokyo Stock Exchange and Osaka Stock Exchange.

## **FACTS**

### **I. Holley's Access to Material Nonpublic Information Regarding the Merger**

15. On or about June 12, 2009, representatives of Nipro met with members of HDI's management to discuss Nipro's interest in potentially acquiring HDI.

16. Thereafter, throughout the summer and fall of 2009, the companies engaged in confidential merger negotiations and took substantial steps towards the commencement of a tender offer. These included the retention of a consulting firm by HDI; multiple high-level meetings between senior representatives of the two companies; a due diligence review; the sharing of nonpublic financial information; the execution of a confidentiality agreement; and the drafting of a merger agreement that provided for a tender offer. All of these substantial steps had been completed or initiated by December 22, 2009.

17. On or about December 21, 2009, Nipro formally offered to acquire HDI for \$11.50 per share. On or about December 22, 2009, the HDI board, with Holley participating, deemed the offer adequate and authorized management to proceed with the drafting of a merger agreement. The companies spent most of January 2010 finalizing the details of the merger agreement.

18. On or about February 2, 2010, the HDI board approved the final merger agreement with Nipro. Under the terms of the agreement, Nipro would acquire all of the outstanding shares of HDI common stock at a cash purchase price of \$11.50 per share, representing an approximately ninety percent premium to the closing price of HDI's

common stock on February 2, 2010, and an approximately eighty-three percent premium to HDI's average closing price for the preceding ninety days.

19. In his capacity as HDI's Chairman of the Board of Directors, Holley received a stream of nonpublic information beginning in at least June 2009 concerning the merger negotiations between HDI and Nipro.

20. Between August 4, 2009, and February 2, 2010, Holley attended at least seventeen meetings at which the potential merger between HDI and Nipro was discussed.

21. Between December 22, 2009 and January 19, 2010, during which period Holley was tipping his friends and relatives, Holley attended at least seven board meetings at which the status of the merger negotiations was discussed. For example, Holley attended a December 22, 2009 board meeting at which HDI's board authorized HDI's management to begin the drafting of a merger agreement on the basis of Nipro's proposed purchase price of \$11.50 per share.

22. In addition to attending board meetings, Holley received numerous documents between August 2009 and January 19, 2010 containing nonpublic information relating to the potential merger. Holley received many such documents in December 2009 and early-January 2010. For example, on December 4, 2009, and December 21, 2009, Holley received copies of offer letters from Nipro offering to purchase HDI for \$10.50 per share and \$11.50 per share respectively. In addition, on January 1, 2010, and January 12, 2010, Holley received drafts of a proposed merger agreement between HDI and Nipro.

23. Holley knew, or was reckless in not knowing, that as Chairman of the Board of Directors of HDI he had a fiduciary duty to maintain the confidentiality of all material, nonpublic information that he received relating to HDI. Holley was expressly made

aware that he had a duty to maintain the confidentiality of material, nonpublic information that he received concerning HDI. For example, on or about March 11, 2009, HDI's General Counsel sent a memorandum to all members of the HDI board, including Holley, which warned them that material information about the company that had not been publicly disseminated should not be provided to anyone who was not required to have such information, and that there were severe penalties for violating this directive.

## **II. Holley's Tipping and the Resulting Trading**

### **A. Dudas and Iamnaita**

#### **1. Holley Tipped Dudas and Iamnaita with Material, Nonpublic Information Relating to the Merger**

24. Both Dudas and Iamnaita have significant connections to Holley, were tipped by Holley, and traded on material, nonpublic information based on Holley's tipping.

25. Dudas has been Holley's personal accountant for at least the last ten years and responsible for preparing Holley's personal income tax returns. In addition, Dudas and Holley have a social relationship, and Dudas has visited Holley's home in Connecticut on multiple occasions. Throughout 2009 and early 2010, Dudas and Holley maintained regular contact and communications through frequent calls and e-mails.

26. The contacts between Holley and Dudas increased dramatically in the period of time when Holley was in possession of and continuing to receive material, nonpublic information regarding about final stages of the HDI/Nipro merger negotiations. For example, in the twelve days leading up to the stock purchases in question (January 7, 2010 through January 19, 2010), Holley and Dudas called each other over thirty times. The amount of telephone activity between them in the twelve day period of January 7, 2010 through January 19, 2010, was more than double the amount of call activity for the

four month period of September 2009 through December 2009. Dudas and Holley called each other at least five times on January 18, 2010, the day before the first stock purchase.

27. During these or other communications between December 2009 and January 13, 2010, Holley, in violation of his fiduciary duty to maintain the confidentiality of such information, knowingly provided Dudas with material, nonpublic information about the acquisition of HDI with the intent that Dudas use the information to purchase HDI stock.

28. Dudas, a certified public accountant, knew or should have known that Holley's provision of the nonpublic information was in breach of Holley's duty not to disclose nonpublic information about the acquisition of HDI.

29. Holley and Iamnaita both are co-directors of Stonescapes Co., Ltd., a business located in Thailand of which Holley is the majority owner. Iamnaita also acts as an assistant to Holley whenever Holley travels in Thailand, making travel arrangements for and delivering e-mail and other messages to Holley. Holley and Iamnaita maintain a close personal relationship. Iamnaita lives in a house located on property that Holley owns in Thailand. In addition, Holley and Iamnaita travelled together on numerous occasions between June 2009 and February 2010. When not travelling with Holley, Iamnaita often stayed at Holley's home in Connecticut, including during the period when the merger negotiations were in progress. When not together, Iamnaita and Holley had regular telephone and e-mail contact.

30. Holley and Iamnaita were in particularly close contact in the days before Iamnaita's illicit trading. Iamnaita was travelling with Holley in Chicago on January 15, 2010, when Iamnaita and Dudas opened their joint brokerage account, and was travelling

with Holley in Las Vegas from January 19 through January 21, 2010, when the stock purchases at issue were made.

31. Between December 2009 and January 13, 2010, and in violation of his fiduciary duty to maintain the confidentiality of such information, Holley knowingly provided Iamnaita with material, nonpublic information about the impending acquisition of HDI with the intention that Iamnaita use the information to purchase HDI stock.

32. Iamnaita knew or should have known that Holley's provision of the nonpublic information about the merger was in breach of Holley's duty not to disclose nonpublic information regarding the acquisition of HDI.

## **2. Dudas and Iamnaita Traded on the Basis of the Material Nonpublic Information Received from Holley**

33. Dudas and Iamnaita used the material nonpublic information that they received from Holley regarding the acquisition of HDI to purchase HDI stock in a joint account opened at Merrill Lynch. As described below, Holley attempted to facilitate the opening of the account and even provided funding for the trading.

34. In January 2010, Holley contacted Trader 1, a friend and former neighbor, to inquire whether he could help open a brokerage account for Iamnaita to purchase stock. Holley further told Trader 1 that Holley would fund the account. Trader 1 later informed Holley that he would not assist in opening the account for Iamnaita.

35. On or about January 15, 2010, Dudas and Iamnaita opened a joint brokerage account at Merrill Lynch for the purpose of purchasing HDI stock. Dudas and Iamnaita have not traded any other stocks in this account.

36. On or about January 19, 2010, Dudas funded the Merrill Lynch brokerage account by wiring \$120,000 from his checking account. The source of the \$120,000 was

a check for \$121,700 dated January 11, 2010, from Holley to Dudas, which Dudas deposited into his checking account on the same day. Thus, Holley provided the funds that Dudas and Iamnaita used to purchase HDI stock.

37. On or about January 19, 2010, Dudas instructed his Merrill Lynch financial adviser to buy \$120,000 worth of HDI stock in the joint account. In an apparent effort to conceal his illegal conduct, Dudas instructed the adviser to break up the purchases over three consecutive days by purchasing approximately \$40,000 worth of stock each day.

38. Between January 19 and January 21, 2010, Dudas and Iamnaita purchased a total of 18,100 shares of HDI stock in the joint brokerage account at Merrill Lynch.

39. On or about March 15, 2010, pursuant to Nipro's tender offer, Dudas and Iamnaita tendered all of their HDI shares, realizing approximately \$90,120 in profits.

#### **B. Trader 1**

40. In early January 2010, and in violation of his fiduciary duty to maintain the confidentiality of such information, Holley tipped material nonpublic information about the impending acquisition of HDI to Trader 1, his friend and former neighbor. Specifically, Holley told Trader 1 that there was an increased likelihood of a merger between HDI and another company. Holley's intent in doing so was in part to recruit his friend to assist in opening a brokerage account with or on behalf of Iamnaita.

41. On the basis of the material nonpublic information received from Holley, Trader 1 purchased 2,000 shares of HDI common stock between January 14, 2010, and January 15, 2010. Trader 1 subsequently tendered all 2,000 shares, realizing a profit of approximately \$10,450.

### **C. Trader 2**

42. In two telephone conversations occurring in late December 2009 and early January 2010, and in violation of his fiduciary duty to maintain the confidentiality of such information, Holley strongly recommended that Trader 2, a longtime friend of Holley and a former employee of HDI, purchase HDI stock.

43. On the basis of the inside information provided by Holley, Trader 2 purchased 5,266 shares of HDI common stock between January 5 and January 12, 2010. On February 3, 2010, Trader 2 sold all 5,266 HDI shares, realizing a profit of approximately \$26,700.

### **D. Trader 3**

44. On or about January 9, 2010, and in violation of his fiduciary duty to maintain the confidentiality of such information, Holley tipped material nonpublic information about the impending acquisition of HDI to Trader 3, his relative. Specifically, in a telephone call that Holley made from Iamnaita's cellular telephone on or about January 9, 2010, Holley recommended that Trader 3 purchase HDI stock because its price was likely to increase as a result of an upcoming merger. Holley further told Trader 3 that he was calling from a telephone line that was not traceable to George Holley. In a later telephone conversation held on or about January 11, 2010, Holley told Trader 3 that he should act quickly to purchase HDI stock.

45. As a result of the information and recommendation from Holley, Trader 3 purchased 12,700 shares of HDI common stock between January 13 and January 21, 2010. Trader 3 sold all 12,700 shares of HDI common stock between February 3 and March 8, 2010, realizing a profit of approximately \$66,100.

46. In a telephone conversation on or about November 28, 2010, Holley also suggested that Trader 3 use analyst reports about HDI that Holley had previously provided to him to give a false explanation for the trading.

**E. Trader 4**

47. On or about January 4, 2010, and in violation of his fiduciary duty to maintain the confidentiality of such information, Holley tipped material nonpublic information about the impending HDI-Nipro merger to Trader 4, an employee of one of Holley's companies. Specifically, during a conversation in Trader 4's office in Trumbull, Connecticut on or about January 4, 2010, Holley recommended that Trader 4 purchase HDI stock because there was likely to be a merger between HDI and another company. Holley told Trader 4 to consider this information to be his bonus.

48. Later that day, Holley provided Trader 4 with published analyst reports about HDI so that Trader 4 could claim that he purchased HDI stock as a result of his own research.

49. As a result of Holley's tip, Trader 4 purchased 13,000 shares of HDI stock between January 5 and January 29, 2010. Trader 4 sold all 13,000 shares on March 4 and March 5, 2010, realizing a profit of approximately \$67,910.

50. In or about December 2010, Trader 4 informed Holley that he had been contacted by the Federal Bureau of Investigation about his trading in HDI stock. The following day, in an apparent effort to reinforce the cover story previously discussed with Trader 4, Holley delivered another set of analyst reports about HDI to Trader 4.

51. In tipping each of Dudas, Iamnaita, and Traders 1 through 4, Holley received a personal benefit by conferring a gift upon a friend, relative, and/or business relation.

## **FIRST CLAIM FOR RELIEF**

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

52. Paragraphs 1 through 51 are hereby realleged and incorporated by reference, as though fully set forth herein.

53. As described above, Defendant Holley engaged in an illegal insider trading scheme in which, in breach of a fiduciary duty and duties of trust or confidence that he owed to HDI and its shareholders, he knowingly or recklessly tipped others material, nonpublic information that was later used to purchase or sell securities.

54. As described above, Defendants Dudas and Iamnaita engaged in an illegal insider trading scheme in which each possessed and used material, nonpublic information which they knew or should have known was provided to them in breach of a fiduciary duty and duties of trust or confidence to purchase HDI securities.

55. By their conduct described above, Defendants Holley, Dudas, and Iamnaita, in connection with the purchase or sale of securities, by the use of any means or instruments 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 the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or course of business which operated or would operate as a fraud or deceit upon any persons, including purchasers or sellers of securities.

56. By engaging in the conduct described above, Defendants Holley, Dudas, and Iamnaita violated, and unless enjoined will again violate, 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.

**SECOND CLAIM FOR RELIEF**

**(Violations of Exchange Act Section 14(e) [15 U.S.C. § 78n(e)]  
and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3] Against All Defendants)**

57. Paragraphs 1 through 51 are hereby realleged and incorporated by reference, as though fully set forth herein.

58. Prior to the public announcement of the tender offer for HDI, and after a substantial step or steps to commence the tender offer had been taken, Holley, while in possession of material information relating to the tender offer, which he knew or had reason to know was nonpublic and had been acquired directly or indirectly from the offering company, the issuer, or any officer, director, partner, or employee, or other person acting on behalf of the offering company or issuer, communicated material, nonpublic information relating to the tender offer to Dudas, Iamnaita, and Traders 1 through 4 under circumstances in which it was reasonably foreseeable that the communication was likely to result in the purchase and sale of HDI securities.

59. Prior to the public announcement of the tender offer for HDI, and after a substantial step or steps to commence the tender offer had been taken, Dudas, while in possession of material information relating to the tender offer, which he knew or had reason to know was nonpublic and had been acquired directly or indirectly from the offering company, the issuer, or any other officer, director, partner, or employee, or other person acting on behalf of the offering company or issuer, purchased securities in HDI.

60. Prior to the public announcement of the tender offer for HDI, and after a substantial step or steps to commence the tender offer had been taken, Iamnaita, while in possession of material information relating to the tender offer, which he knew or had reason to know was nonpublic and had been acquired directly or indirectly from the offering company, the issuer, or any other officer, director, partner, or employee, or other person acting on behalf of the offering company or issuer, purchased securities in HDI.

61. By reason of the conduct described above, Defendants Holley, Dudas, and Iamnaita violated, and unless enjoined will again violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests a final judgment:

A. Permanently enjoining each Defendant from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];

B. Ordering each Defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains received as a result of the conduct alleged in this complaint, including, as to each Defendant, his own illicit trading profits or other ill-gotten gains and, as to Holley, the illicit trading profits or other ill-gotten gains of each of his direct and indirect tippees;

C. Ordering each Defendant to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

D. Permanently prohibiting Defendant Holley, pursuant to Section 21(d)(2) [15 U.S.C. § 78u(d)(2)] of the Exchange Act, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

E. Granting such other and further relief as the Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

A jury trial is demanded on all issues so triable.

Dated: January 13, 2011

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Respectfully submitted,



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