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12 CV 6707

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

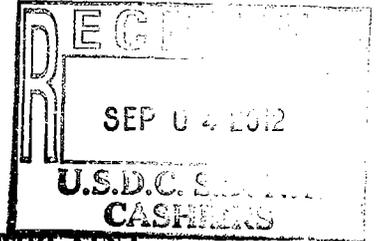
Plaintiff,

-against-

HYUNG LIM,

Defendant.

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COMPLAINT

ECF CASE

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Hyung Lim (“Lim”), alleges as follows:

SUMMARY

1. This case concerns insider trading in the securities of Nvidia Corporation (“Nvidia”). During at least 2009 and 2010, Lim obtained material nonpublic information about the contents of Nvidia’s upcoming quarterly earnings announcements from a friend who worked in the accounting department of Nvidia (the “Nvidia Insider”). Lim relayed that information to his friend Danny Kuo (“Kuo”), a hedge fund manager at Investment Adviser B.<sup>1</sup> Kuo, in turn, passed the information to investment professionals at other

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<sup>1</sup> This complaint and the complaint in *Securities and Exchange Commission v. Adondakis*, 12 CIV 0409 (S.D.N.Y.) (HB) include related allegations concerning trading in Nvidia securities by Kuo’s employer and others who received material nonpublic

hedge funds, including Diamondback Capital Management, LLC (“Diamondback”) and Level Global Investors, LP (“Level Global”).

2. Kuo and his tippees traded Nvidia securities on the basis of the material nonpublic information that Lim provided and reaped illicit trading gains and avoided losses in excess of \$15.9 million.

3. The Nvidia information that Lim obtained on multiple occasions from the Nvidia Insider and repeatedly provided to Kuo included the company’s internal calculations of its revenues, gross profit margins, and other financial metrics that it later disclosed to the public in its quarterly earnings announcements. Kuo compensated Lim by paying him at least \$15,000 and by providing Lim with material nonpublic information about a corporate acquisition, which Lim used to make profitable trades.

4. Kuo used the information he received from Lim to benefit hedge funds operated by his employer, Investment Adviser B. Kuo also passed Lim’s information to other investment professionals with whom Kuo regularly shared information. Those professionals included Spyridon “Sam” Adondakis (“Adondakis”) – an analyst at Level Global – and Jesse Tortora (“Tortora”) – an analyst at investment adviser Diamondback.

5. In April and May 2009, the Nvidia Insider provided Lim with material nonpublic information concerning Nvidia’s financial results for the first quarter of the company’s 2010 fiscal year in advance of the company’s quarterly earnings announcement on May 7, 2009. Lim passed this inside information to Kuo, who, in turn,

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information about the company from Kuo. To avoid confusion, this complaint refers to Kuo’s employer as “Investment Adviser B,” the same name used to refer to it in the *SEC v. Adondakis* complaint.

traded and/or caused trades to be made based on the information, and passed it to Adondakis, Tortora, and others.

6. Trading on the basis of Lim's information, a hedge fund managed by Investment Adviser B reaped profits and avoided losses of at least \$90,000, Diamondback's hedge funds reaped profits of at least \$73,000, and Level Global's hedge funds reaped profits and avoided losses of at least \$15.6 million.

7. In late 2009 and 2010, Lim continued to obtain material nonpublic information concerning Nvidia's financial results from the Nvidia Insider and passed it to Kuo. Hedge funds controlled by Kuo and his supervisor at Investment Adviser B traded on the basis of the material nonpublic information that Lim provided in advance of Nvidia's third quarter 2010 earnings announcement on November 5, 2009, and in advance of Nvidia's third quarter 2011 earnings announcement on November 11, 2010. As a result of such trades, the funds at Investment Adviser B reaped profits in excess of \$44,000 in November 2009 and \$105,000 in November 2010.

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

8. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against Lim, enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and disgorgement of ill-gotten gains or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. The Commission also seeks civil penalties pursuant to Section 21A of the Exchange Act

[15 U.S.C. § 78u-1]. In addition, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], the Commission seeks an order barring Lim 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)]. Finally, the Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

10. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York and elsewhere, and were effected, directly or indirectly, by making the use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, shares of Nvidia were traded on the NASDAQ, an electronic stock market located in the Southern District of New York.

**DEFENDANT**

11. **Lim**, age 46, resides in Los Altos, California. During the relevant period, he was employed by a company that sells and designs semiconductors.

**RELEVANT PERSONS AND ENTITIES**

12. **Adondakis**, age 40, resides in Santa Monica, California. From 2006 until 2010, Adondakis resided in New York, New York, and worked as an analyst at Level Global.

13. **Anthony Chiasson** (“Chiasson”), age 39, resides in New York, New York, and was a founding partner of Level Global. During the relevant time period, he served as the firm’s director of research and the sector head of the technology, media and telecommunications sector, and also had authority to execute trades for the hedge funds managed by Level Global.

14. **Kuo**, age 36, resides in San Marino, California. Kuo was a vice-president and fund manager at Investment Adviser B from April 2008 until approximately January 2012.

15. **Todd Newman** (“Newman”), age 47, resides in Needham, Massachusetts. Newman was a portfolio manager at Diamondback from March 2006 through January 2011.

16. **Tortora**, age 35, resides in Pembroke Pines, Florida. From late 2007 until early 2010, Tortora worked as an analyst at Diamondback.

17. **Diamondback** is an investment adviser based in Stamford, Connecticut. Diamondback has been registered with the Commission since January 2006 and has

served as adviser to hedge funds with approximately \$4 billion worth of assets under management.

18. **Level Global** was an unregistered investment adviser located in Greenwich, Connecticut, and New York, New York, that managed hedge funds with approximately \$4 billion worth of assets in 2010.

19. **Nvidia** is a Delaware corporation headquartered in Santa Clara, California. Nvidia develops and sells graphics processors used in smart phones, tablets, video game systems, and other computing devices. Nvidia's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock is traded on the NASDAQ under the symbol "NVDA."

20. **Investment Adviser B** is a private trust company and unregistered investment adviser based in South Pasadena, California, and Reno, Nevada.

#### **FACTS**

21. During at least 2009 and 2010, the Nvidia Insider provided Lim with material nonpublic information concerning Nvidia's calculation of its revenues, gross profit margins, and other important financial metrics before the company made those figures public in its quarterly earnings announcements.

22. The Nvidia Insider typically provided Lim with not just one but a series of tips, which grew more accurate and reliable as Nvidia finalized its financial results for a given quarter and prepared to report them to the public. Lim relayed that information to his friend Kuo, who traded and/or caused trades to be made based on the information, and passed it to Adondakis, Tortora, and others.

23. Kuo, who became friends with Lim after attending poker parties organized by a mutual friend, compensated Lim for the confidential Nvidia information that Lim provided. On one occasion, Kuo wired \$5,000 to a Las Vegas casino to pay a debt of Lim's. Later, Kuo made two cash payments of \$5,000 each to Lim. In 2009, Kuo also provided Lim with material nonpublic information about a corporate acquisition, which Lim used to purchase stock and reap over \$11,000 in trading profits.

24. Trading on the basis of material nonpublic information that Lim obtained from the Nvidia Insider, Lim's direct and downstream tippees generated profits and/or avoided losses of at least \$15.9 million by buying and selling Nvidia securities in anticipation of the company's quarterly earnings announcements on May 7, 2009, November 5, 2009, and November 11, 2010.

#### **Nvidia's First Quarter 2010 Earnings Announcement**

25. In April and May 2009, the Nvidia Insider provided Lim with material nonpublic information about Nvidia's financial performance for the first quarter of the company's 2010 fiscal year – a period running from January 26, 2009 to April 26, 2009 – in advance of the company's earnings announcement on May 7, 2009. Lim gave that information to Kuo, who traded and/or caused trades to be made based on the information, and also forwarded it to Tortora, Adondakis, and others. Trading on the basis of that inside information, hedge funds managed by Investment Adviser B, Diamondback, and Level Global, realized profits and avoided losses of approximately \$15.8 million.

26. In early April 2009, Lim obtained material nonpublic information from the Nvidia Insider concerning Nvidia's preliminary calculations of its revenue and gross

profit margin. These early tips indicated that the company might announce a first quarter gross profit margin that was substantially worse than Wall Street analysts were expecting. After Lim relayed this information to Kuo, a hedge fund managed by Kuo and his supervisor at Investment Adviser B sold 4,000 shares of Nvidia stock on April 15 and an additional 5,000 shares on April 20, 2009.

27. On the night of Friday, April 24, 2009, Kuo telephoned Lim and spoke to him for approximately two minutes. On Monday, April 27, 2009, Kuo sent an email to Adondakis, Tortora, and others in which he summarized the inside information he received from Lim. Among other metrics, Kuo reported that Nvidia expected to report a gross profit margin of approximately 30 percent, which was substantially lower than analysts' then-current consensus of approximately 35 percent.

28. Within minutes of receiving Kuo's April 27 email, Tortora and Adondakis each forwarded that news to his supervisor (*i.e.*, Newman and Chiasson, respectively). Less than four minutes after Tortora forwarded the update to Newman, the Diamondback portfolio that Newman controlled initiated a short position in Nvidia stock, betting that the price of the stock would go down.<sup>2</sup> Less than seven minutes after Adondakis advised Chiasson of Nvidia's worse-than-expected first quarter gross margin, Chiasson caused two Level Global hedge funds to start selling Nvidia stock. By the close of trading on

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<sup>2</sup> "Taking a short position," "shorting," or "short selling" is the practice of selling a security that one does not own, but rather has arranged to borrow from a third party, with the intention of purchasing (also called "covering") the security at a later date. A short seller stands to gain if the price of the security declines between the short sale and the purchase because the short seller has sold the security at a price that is greater than the purchase price.

April 27, the two Level Global hedge funds had sold all of their Nvidia holdings – this amounted to a sale of more than \$32.7 million worth of Nvidia securities.

29. As Nvidia’s quarterly earnings announcement approached, Lim obtained additional updates from the Nvidia Insider about the revenue and gross margin numbers the company would report, and relayed that information to Kuo. On Saturday, May 2, 2009, the Nvidia Insider called Lim twice and spoke to him for about three minutes. One minute after the conclusion of the second call, Lim called Kuo and spoke to him for over eight minutes. On Monday, May 4, 2009, Kuo emailed Adondakis, Tortora, and others to advise them that he had spoken to his Nvidia source over the weekend, and that his source had stated that the company would report first quarter revenues of “around \$668 million,” and that the company was still planning to report a worse-than-expected gross profit margin of 30 percent.

30. Lim spoke to the Nvidia Insider again on May 5, 2009, and, the following morning, spoke to Kuo for over 12 minutes. Later on May 6, Kuo had a nine-minute call with Adondakis. Kuo then sent an email to Adondakis, Tortora, and others indicating that he had provided updated Nvidia information to Adondakis during their conversation. Shortly thereafter, Tortora called Kuo and spoke to him for about four minutes.

31. After Kuo received Nvidia information from Lim, a hedge fund managed by Kuo and his supervisor at Investment Adviser B sold approximately 29,000 shares of Nvidia stock between May 5 and May 7, 2009 and established a short position in advance of the quarterly earnings announcement on the evening of May 7, 2009.

32. Within 45 minutes of receiving Kuo's May 4 email, Level Global's hedge funds initiated a short position in Nvidia stock that grew to approximately 3.9 million shares by the time of Nvidia's May 7 earnings announcement.

33. Diamondback hedge funds controlled by Newman also took a short position in Nvidia. By the time of the company's May 7 earnings announcement, Newman had established a short position of approximately 70,000 shares.

34. After the close of trading on May 7, 2009, Nvidia announced its first quarter financial results including a gross profit margin of 30.6 percent, which was substantially short of analysts' consensus estimate of 35 percent. On May 8, the day after the announcement, Nvidia stock, which had closed at \$10.73 per share on May 7, fell as low as \$9.11 and closed at \$9.25, down nearly 14 percent from the previous day's close.

35. By trading on the basis of material nonpublic information that Lim provided concerning Nvidia's May 7, 2009 earnings announcement, funds at Investment Adviser B, Diamondback, and Level Global reaped profits and/or avoided losses of approximately \$90,000, \$73,000, and \$15.6 million respectively.

#### **Nvidia's Third Quarter 2010 Earnings Announcement**

36. Lim also provided Kuo with material nonpublic information concerning Nvidia's financial performance for the third quarter of the company's 2010 fiscal year – a period running from July 27, 2009 to October 25, 2009 – in advance of the company's earnings announcement on November 5, 2009. Once again, Kuo's employer, Investment Adviser B, engaged in profitable trading based on this information.

37. On November 4, 2009, the day before Nvidia was to announce its third quarter earnings results, Kuo, who was traveling for business, telephoned Lim and spoke

to him for less than one minute. Immediately following that call, Lim telephoned the Nvidia Insider and the two spoke for over three minutes. Lim then promptly conveyed to Kuo the Nvidia information that Lim obtained from his source. One minute after the conclusion of Lim's call with the Nvidia Insider, Lim left a voicemail for Kuo. Later that day, after the close of market trading, Kuo returned Lim's call and the two spoke for more than one minute. Less than ten minutes after the conclusion of that call, Kuo telephoned his supervisor at Investment Adviser B to convey the Nvidia information he had just received.

38. The next day, November 5, 2009, a hedge fund controlled by Kuo and his supervisor at Investment Adviser B purchased of 45,800 shares of Nvidia stock.

39. After the market close on November 5, Nvidia announced third quarter revenues of \$903.2 million and a gross margin of 43.4 percent, exceeding analysts' consensus estimates of \$837.7 million and 37.2 percent. After closing at \$12.27 per share on November 5, Nvidia's stock price climbed in after-hours trading and closed at \$13.16 per share on the following day, up more than seven percent from the previous day's close. As a result of its purchases of Nvidia stock on November 5, a hedge fund controlled by Kuo and his supervisor at Investment Adviser B reaped trading profits of more than \$44,000.

#### **Nvidia's Third Quarter 2011 Earnings Announcement**

40. In 2010, Lim continued to provide Kuo with inside information concerning Nvidia's financial performance, including information about the company's results for the third quarter of its 2011 fiscal year – a period running from August 2, 2010 to October 31, 2010. Once again, hedge funds controlled by Kuo and his supervisor at

Investment Adviser B executed profitable trades based on this inside information, which was ultimately disclosed to the public in a quarterly earnings announcement on November 11, 2010.

41. On the evening of November 2, 2010, nine days before Nvidia's scheduled earnings announcement, Lim telephoned the Nvidia Insider and the two spoke for approximately eleven minutes. Immediately following that call, Lim telephoned Kuo and conveyed the information he had just obtained. The next day, November 3, 2010, a fund controlled by Kuo and his supervisor at Investment Adviser B purchased 7,400 shares of Nvidia stock.

42. On November 4, 2010, Kuo sent an email to Adondakis and Tortora relaying the inside information he had obtained from Lim. Among other information, Kuo reported that his source believed that Nvidia would project that its quarter-over-quarter revenue number would rise up to five percent during the fourth quarter of fiscal 2011. That same day, a fund controlled by Kuo and his supervisor at Investment Adviser B purchased an additional 17,200 shares of Nvidia stock.

43. On the evening of November 9, 2010, two days before Nvidia's scheduled earnings announcement, Lim telephoned the Nvidia Insider and received an update on Nvidia's financial performance. One minute after that call ended, Lim placed a short telephone call to Kuo. About ten minutes later, Kuo returned Lim's call, and, during a five-minute conversation, received updated Nvidia information from him.

44. On November 10, 2010, a hedge fund controlled by Kuo and his supervisor at Investment Adviser B purchased 4,000 shares of Nvidia stock and Kuo purchased options to buy Nvidia stock in his personal account. The next day,

another fund controlled by Kuo and his supervisor at Investment Adviser B purchased 50,100 additional shares of Nvidia stock and added to its long position by selling short 200 Nvidia put options.<sup>3</sup>

45. After the close of regular market trading on November 11, 2010, Nvidia announced its third quarter 2011 financial results and, as the Nvidia Insider had previously communicated to Lim, stated that the company expected to achieve sales revenue growth in a range of 2.5 to 5 percent during its next fiscal quarter. As a result of this projection, which was substantially better than analysts' consensus estimate of 1 percent revenue growth, the price of Nvidia stock rose over five percent and closed at \$13.26 per share on November 12, 2010.

46. As a result of its Nvidia stock and options trading in early November, hedge funds controlled by Kuo and his supervisor at Investment Adviser B reaped profits in excess of \$105,000. By purchasing Nvidia options on November 10 and selling them two days later, Kuo realized a gain of over \$1,700 in his personal trading account.

### **CLAIMS FOR RELIEF**

#### **CLAIM I**

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

47. The Commission realleges and incorporates by reference paragraphs 1 through 46, as though fully set forth herein.

48. The information provided by the Nvidia Insider to defendant Lim was, in each case, material and nonpublic. In addition, the information was, in each case,

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<sup>3</sup> A put option is a financial contract between two parties that gives the buyer the right, but not the obligation, to sell an agreed quantity of stock during a specified time period at a specified price. A buyer pays a premium to purchase this right. A buyer of a put option generally stands to gain if the price of the stock decreases.

considered confidential by Nvidia, the company that was the source of the information, and which had policies protecting confidential information.

49. The Nvidia Insider provided the material nonpublic information to Lim in breach of the fiduciary duty that the Nvidia Insider owed to Nvidia, and did so with the expectation of receiving a benefit and/or to confer a financial benefit on Lim.

50. Lim knew, recklessly disregarded, or should have known, that the Nvidia Insider owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

51. Lim tipped Kuo material nonpublic information concerning Nvidia, and Lim knew, recklessly disregarded, or should have known, that the material nonpublic information concerning Nvidia that Lim received from the Nvidia Insider was disclosed or misappropriated in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

52. Lim is liable for the trading of Kuo, Investment Adviser B, Diamondback, and Level Global because he indirectly caused trades in Nvidia securities that were executed on behalf of funds controlled or managed by Kuo, Investment Adviser B, Diamondback, and Level Global. The Nvidia Insider unlawfully disclosed material nonpublic information concerning Nvidia to Lim, who in turn unlawfully disclosed this material nonpublic information to Kuo, who relayed it to his supervisor at Investment Adviser B, Tortora at Diamondback, Adondakis at Level Global, and others.

53. By virtue of the foregoing, Lim, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a 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 courses of business which operated or would have operated as a fraud or deceit upon persons.

54. By virtue of the foregoing, defendant Lim directly or indirectly violated, and, unless enjoined, will again violate, 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].

**CLAIM II**  
**Violations of Section 17(a) of the Securities Act**

55. The Commission realleges and incorporates by reference paragraphs 1 through 54, as though fully set forth herein.

56. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendant Lim: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted 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; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

57. By reason of the conduct described above, Lim directly or indirectly violated, and, unless enjoined, will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

## **RELIEF SOUGHT**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

### **I.**

Permanently restraining and enjoining defendant Lim from violating 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];

### **II.**

Permanently restraining and enjoining defendant Lim from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

### **III.**

Ordering defendant Lim to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint, including his ill-gotten gains, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of his direct and downstream tippees;

### **IV.**

Ordering defendant Lim to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

### **V.**

Barring defendant Lim, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], 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. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

**VI.**

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

Dated: New York, New York  
September 4, 2012

  
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