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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

JOHN KINNUCAN
and
BROADBAND RESEARCH CORPORATION,

Defendants.

COMPLAINT

ECF CASE

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants John Kinnucan ("Kinnucan") and Broadband Research Corporation ("Broadband"), alleges as follows:

SUMMARY

1. This case involves insider trading by Kinnucan and his consulting firm Broadband, which was purportedly in the business of providing to its clients legitimate research about publicly traded technology companies, but which often provided nonpublic information that Kinnucan obtained from sources inside these companies.

2. From at least 2009 through 2010, Kinnucan obtained material nonpublic information from well-placed employees at a variety of public technology companies, including F5 Networks, Inc. ("F5"). Kinnucan compensated his sources in a variety of ways. Kinnucan paid at least one of his sources cash, and provided other sources with meals, ski trips and other vacations. Kinnucan also befriended his sources as a means to encourage them to provide him with material nonpublic information.

3. Kinnucan peddled the material nonpublic information he obtained from his sources to Broadband's clients: portfolio managers and analysts at prominent hedge funds and other nationally recognized investment advisers. Kinnucan provided his clients with oral and email updates of the material nonpublic information he obtained from his sources. For this "service," Kinnucan charged his clients tens of thousands of dollars per year, and generated hundreds of thousands of dollars in annual revenues for Broadband during 2009 and 2010.

4. Broadband's investment adviser clients traded based on the material nonpublic information that Kinnucan provided and generated sizable profits for the accounts that they managed. In July 2010, Kinnucan obtained material nonpublic information from a source who worked at F5 (the "F5 Source") regarding F5's upcoming quarterly earnings announcement. Kinnucan provided this information to several of his clients. At least three of those clients traded on the basis of Kinnucan's inside information and made profits or avoided losses of approximately \$1.58 million.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

5. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against Kinnucan and Broadband, enjoining them 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]. 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

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

7. Venue lies in this Court pursuant to 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. During the relevant time period, certain clients of Kinnucan and Broadband had offices in New York, New York, and Kinnucan regularly placed telephone calls to New York, New York to conduct business. Certain communications described in this Complaint took place while at least one of the parties to the communication was physically located in New York, New York. Moreover, certain of the trades described in this Complaint were executed through brokerage firms located

in New York, New York. Also, the securities of F5 traded on Nasdaq, which is headquartered in New York, New York.

DEFENDANTS

8. **Kinnucan**, age 54, resides in Portland, Oregon. From at least 2008 through at least November 2010, Kinnucan served as Broadband's President. In the 1990s, Kinnucan served in various roles in the securities industry and held Series 7 and 63 licenses.

9. **Broadband** is an Oregon corporation based in Portland, Oregon. Broadband was incorporated in 2008.

RELEVANT ENTITIES

10. **F5** is a Washington corporation headquartered in Seattle, Washington. F5 is a provider of application delivery networking technology that optimizes the delivery of network-based applications and the security, performance and availability of servers, data storage devices and other network resources. F5's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "FFIV."

11. **Investment Adviser A** is an unregistered hedge fund investment adviser based in Dallas, Texas.

12. **Investment Adviser B** is a registered investment adviser based in Boston, Massachusetts.

FACTS

BROADBAND

13. Kinnucan founded Broadband, his expert consulting business, in approximately 1999.
14. Kinnucan and Broadband used a simple business model. Kinnucan recruited employees of public companies, primarily in the technology industry, to provide him with material nonpublic information about their employers. Once Kinnucan won the trust of a source, he would return to him or her repeatedly for inside information concerning the source's company as well as other material nonpublic information to which the source had access.
15. Broadband's clients consisted of portfolio managers and analysts at prominent investment advisory firms, including hedge fund and mutual fund advisors, across the United States. At any given time, Broadband had between 10 and 20 such firms as clients.
16. After Kinnucan obtained material nonpublic information from a source, he provided it to his investment adviser clients through phone calls and emails. Kinnucan charged his clients tens of thousands of dollars annually for his "services" and generated hundreds of thousands of dollars in annual revenues for Broadband. For example, Kinnucan charged Investment Adviser A \$10,000 for Broadband's services in the third quarter of 2010. Kinnucan charged Investment Adviser B \$72,000 (approximately \$18,000 per quarter) for Broadband's services in 2010.

KINNUCAN OBTAINS MATERIAL NONPUBLIC INFORMATION ABOUT F5

17. From approximately 2008 to 2010, Kinnucan's sources included employees of at least five public technology companies, including F5.

18. Kinnucan first met the F5 Source in 2008. Kinnucan told the F5 Source that he was in the investment business and that he provided information about public companies to his investor clients. Kinnucan made clear that he wanted the F5 Source to provide him with inside information about F5. Initially, the F5 Source agreed to speak to Kinnucan about F5's general performance, but refused to supply specific information.

19. Over time, the F5 Source and Kinnucan grew to be friends. Kinnucan treated the F5 Source to restaurant meals and, on occasion, Kinnucan provided the F5 Source with personal investing tips. In 2010, the F5 Source stayed at a beach house with Kinnucan and his family.

20. In late 2009, Kinnucan started asking the F5 Source to provide him with F5's quarterly financial results before that information was announced to the public. Kinnucan typically called the F5 Source around the end of F5's fiscal quarters seeking this information.

21. Starting in late 2009, the F5 Source began providing Kinnucan with F5's gross sales numbers, which gave Kinnucan insight into how much revenue F5 was generating, and continued providing this information through approximately October 2010. The F5 Source also conveyed to Kinnucan other confidential information about F5 that the F5 Source periodically learned as a result of being employed by the company.

22. In providing such information to Kinnucan, the F5 Source violated F5's Code of Business Conduct and Ethics, which included a standard prohibition against

insider trading. The Code of Business Conduct stated that all nonpublic information about F5 should be considered confidential information. F5 employees with access to confidential information were “not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of [F5’s] business.”

INSIDER TRADING IN F5 SECURITIES BASED ON INFORMATION KINNUCAN PROVIDED

23. In July 2010, Kinnucan provided material nonpublic information that he received from the F5 Source to his investment adviser clients including a portfolio manager at Investment Adviser A, and at least one analyst and one portfolio manager who were employed at Investment Adviser B. Kinnucan’s clients at Investment Adviser A and Investment Adviser B profitably traded F5 securities based on the material nonpublic information they received from Kinnucan.

24. On or about the morning of July 2, 2010, Kinnucan spoke with the F5 Source by telephone and received inside information that F5 had generated better-than-expected financial results in its third quarter of fiscal year 2010 (April 1 – June 30, 2010), which the company was scheduled to announce on July 21, 2010.

25. Within hours of this call, Kinnucan had telephone calls with or left messages for several of his clients, including the analyst at Investment Adviser B, during which he conveyed his understanding that F5’s third quarter revenues and the company’s projection of its fourth quarter revenues would exceed market expectations. That same morning, the analyst at Investment Adviser B emailed the portfolio manager at Investment Adviser B stating: “Kinnucan very positive on FFIV. Thinks they can guide whatever they want.”

26. On the afternoon of July 2, 2010, accounts managed by the portfolio manager at Investment Adviser B covered over 43,000 shares of a short position that these accounts had previously established in F5 stock.¹

27. On July 6, 2010, Kinnucan spoke with the portfolio manager at Investment Adviser A for 15 minutes. They spoke again on July 15, 2010. During the July 15 conversation, Kinnucan confirmed that he had previously told the portfolio manager about F5's better-than-expected quarterly results. On July 21, 2010, the portfolio manager at Investment Adviser A purchased 99,000 shares of F5 stock.

28. After the close of market trading on July 21, 2010, F5 announced third quarter revenues of \$230.5 million, which was \$11 million higher than Wall Street analysts' consensus estimate of approximately \$219 million. The company also issued a revenue goal of between \$242 and \$247 million for the fourth quarter of 2010, which exceeded market expectations. The day after the announcement, F5's share price rose more than 14 percent, from \$73.11 per share at the close of trading on July 21 to \$83.40 as the close of trading on July 22.

29. By covering more than 43,000 shares of F5 stock on July 2, 2010, the portfolio manager at Investment Adviser B avoided over \$630,000 in losses.

30. On July 22 and July 23, the portfolio manager at Investment Adviser A sold his position in F5 and netted over \$950,000 in profits. When Kinnucan spoke to the

¹ 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.

portfolio manager at Investment Adviser A on July 22, 2010, Kinnucan claimed credit for the F5 information he had provided.

CLAIM FOR RELIEF

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

31. The Commission realleges and incorporates by reference paragraphs 1 through 30, as though fully set forth herein.

32. The information provided by the F5 Source to defendants Kinnucan and Broadband in at least July 2010 was material and nonpublic. In addition, the information was considered confidential by F5, the company that was the source of the information, and F5 had policies protecting confidential information.

33. The F5 Source provided the material nonpublic information to Kinnucan and Broadband in breach of the fiduciary duty that the F5 Source owed to F5, and did so with the expectation of receiving a benefit.

34. Kinnucan and Broadband knew, recklessly disregarded, or should have known, that the F5 Source owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

35. Kinnucan and Broadband tipped their tippees material nonpublic information concerning F5, and each knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

36. Kinnucan and Broadband are jointly and severally liable for the trading of Investment Adviser A and Investment Adviser B because they unlawfully disclosed F5 material nonpublic information to Investment Adviser A and Investment Adviser B.

37. By virtue of the foregoing, Kinnucan and Broadband, and each of them, 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.

38. By virtue of the foregoing, Kinnucan and Broadband, and each of them, 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].

RELIEF SOUGHT

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

I.

Permanently restraining and enjoining Kinnucan and Broadband, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or

otherwise, and each of them, 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.

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

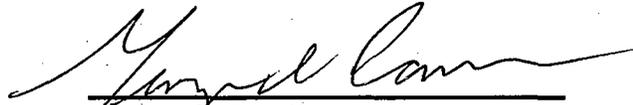
III.

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

IV.

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

Dated: New York, New York
February 17, 2012



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