

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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<b>SECURITIES AND EXCHANGE COMMISSION,</b>		:	
		:	
<b>Plaintiff,</b>		:	
		:	
<b>v.</b>		:	<b>Civil Action No.</b>
		:	
<b>DAVID J. CANSIAN,</b>		:	<b>JURY TRIAL</b>
		:	<b>DEMANDED</b>
<b>Defendant.</b>		:	
		:	
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**COMPLAINT**

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendant David J. Cancian (“Cancian” or “Defendant”).

**PRELIMINARY STATEMENT**

1. This case involves illegal insider trading by Cancian in the securities of American Superconductor Corporation (“AMSC”) shortly before the company announced on April 5, 2011 that its fourth quarter and fiscal year-end financial results would be lower than expected due to a deteriorating relationship with its primary customer, Sinovel Wind Group Co., Ltd. (“Sinovel”).

2. Cancian learned ahead of time that AMSC was in trouble from a friend who was a member of AMSC’s senior management (the “insider”). The insider conveyed material nonpublic information to Cancian when they met for drinks at a bar on April 1, 2011, a few days prior to AMSC’s announcement. Among other things, they discussed how problems at AMSC were going to adversely impact the insider’s financial future. During this conversation, the insider also expressed concern about the financial impact to Cancian from a decrease in AMSC’s stock price. The insider knew that Cancian had previously invested in the company.

3. On the next trading day, April 4, 2011, Cancian sold the majority of the AMSC shares he owned and also made certain AMSC options trades. In this way, Cancian largely avoided what his insider friend had forewarned—a 42% drop in AMSC’s stock price following the April 5, 2011 public disclosure of its problems with Sinovel. As a result of his illegal trading, Cancian made profits and avoided losses of \$46,930.

4. By knowingly or recklessly engaging in the conduct described in this Complaint, Cancian violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

5. The Commission seeks an injunction against future violations, disgorgement of illicit profits, prejudgment interest thereon, and a civil penalty.

#### **JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1].

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa]. The Defendant has directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

8. Venue in this district is proper under 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because the acts, practices, transactions and courses of business constituting the alleged securities law violation(s) occurred in substantial part within this district and because Cancian resides in this district.

**DEFENDANT AND RELEVANT ENTITIES**

9. David J. Cancian, age 51, is a resident of Lexington, Massachusetts.

10. American Superconductor Corporation is headquartered in Devens, Massachusetts. Its common stock is publicly traded on the NASDAQ under the symbol "AMSC." During the relevant time, AMSC provided hardware and software for the wind power industry. AMSC's fiscal year begins on April 1 and ends on March 31.

11. Sinovel Wind Group Co., Ltd. is a Chinese company engaged in the development, design, manufacturing and sale of wind turbines. From at least fiscal year 2008 through 2010, Sinovel was AMSC's primary customer, and AMSC's sales to Sinovel generated approximately 67-70 percent (%) of AMSC's revenues.

**FACTUAL ALLEGATIONS**

**A. AMSC's Loss of Business from Sinovel**

12. Because a significant portion of AMSC's revenues were derived from Sinovel, loss of business from Sinovel loomed as a risk to AMSC's financial results and stock price. AMSC disclosed this risk in its public filings with the Commission. For example, AMSC's Annual Report on Form 10-K for its fiscal year ended March 31, 2010 included the following disclosure:

Revenue growth in fiscal 2009, 2008 and 2007 was driven largely by our AMSC Power Systems business unit. Our largest customer is Sinovel in China. Sinovel accounted for a majority of our total revenues during these periods. Revenues from Sinovel are supported by purchase orders and contracts for electrical system core components as well as development contracts for the design of wind turbines. If Sinovel cancelled purchase orders or development contracts, or discontinued future purchases from us, we would likely be unable to replace the related revenues. This would have a serious negative impact on our operating results and financial position.

13. Under the contracts between AMSC and Sinovel, AMSC typically made monthly shipments of products to Sinovel, for which Sinovel would normally pay within 30 days. Starting in approximately September 2010, however, Sinovel missed and/or delayed payments for certain delivered shipments.

14. During the fourth quarter of AMSC's fiscal year ended March 31, 2011, Sinovel requested that AMSC upgrade the technology in certain products and indicated that it may not accept additional shipments without such changes.

15. During the last week of that quarter, AMSC negotiated with Sinovel over the requested product modifications, the acceptance of approximately \$65 million in products scheduled for delivery by March 31, 2011, and the payment of approximately \$62 million in outstanding receivables.

16. On March 31, 2011, Sinovel's president informed the AMSC officer who had flown to China for the negotiations that Sinovel would not accept the contracted shipments that were ready for delivery or presently pay down its overdue accounts receivable balance. The AMSC officer promptly relayed this information to other AMSC executives, including the insider who was a long-time friend of Cancian.

**B. Cancian Learns That AMSC's Stock Price is Likely to Drop**

17. The next day, Friday, April 1, 2011, Cancian met the insider at a bar after work. Friends for around twenty years, the two individuals regularly play golf and socialize together.

18. During the course of the evening at the bar, the insider discussed with Cancian that due to problems at AMSC, the insider was losing a lot of money, would be unable to retire early, and instead would have to continue working at AMSC for a long time. Cancian knew that the insider held AMSC stock and options and had hoped to cash-in those holdings to fund an early retirement.

19. At one point during the evening, the insider further expressed concern about whether Cancian would lose money from a decrease in AMSC's stock price. The insider knew that Cancian had previously invested in the company. Cancian assured his friend that he would be fine because only a small portion of his savings was invested in AMSC.

**C. Cancian Trades While in Possession of Material Nonpublic Information Concerning AMSC**

20. The next morning, Saturday, April 2, 2011, Cancian checked AMSC's stock price and saw that it had been relatively flat during the past week. Cancian then called his brokerage firm to ask about ways to take advantage of a stock he owned that he believed was going to decrease in value in the short term. Among other things, Cancian asked the broker fielding the inquiry about using "covered calls."

21. A "covered call" refers to a transaction in which an investor who owns stock in a company is paid for agreeing to sell some or all of those shares at a certain price, known as the "strike price." The investor is only obligated to sell the shares for a limited period of time. The investor selling (i.e., writing) the call option retains the shares if the option (i.e., the right to buy the shares) is not exercised by the expiration date of the contract. One option contract "covers" 100 shares. By selling (or writing) a covered call, an investor generates income that would at least partially offset any unrealized loss from a declining share price.

22. On Monday, April 4, 2011, Cancian sold 3,000 of the 5,000 AMSC shares held in his general investment account and sold all 1,000 AMSC shares held in his individual retirement account (IRA), generating proceeds of \$98,160.

23. That same day, Cancian also sold 20 "covered calls" on the remaining 2000 AMSC shares he continued to hold, generating additional proceeds of \$6,869. Specifically, Cancian sold 10 calls (covering a total of 1000 shares) with a \$21 strike price and May 21, 2011

expiration, and sold another 10 calls (covering a total of 1000 shares) with a \$22.50 strike price and July 16, 2011 expiration.

24. On April 5, 2011, after the close of trading, AMSC issued an update regarding its anticipated financial results for its fourth quarter and fiscal year ended March 31, 2011. The public announcement provided, in pertinent part, that:

- Sinovel had refused to accept the March Shipments and AMSC expected Sinovel to reduce its level of inventory before accepting further shipments;
- As a result, AMSC expected its fourth quarter revenues to be less than \$42 million and to generate a net loss for the quarter;
- AMSC's yearly revenues would be less than \$355 million (as compared with the company's prior forecast for fiscal year 2010 revenues of \$430-\$440 million);
- AMSC's GAAP and non-GAAP earnings for fiscal year 2010 would be well below the company's previous forecasts;
- AMSC's cash balance was negatively impacted by Sinovel's failure to pay for certain contracted shipments made in fiscal year 2010; and
- AMSC would be reviewing the appropriateness of the timing of its revenue recognition on approximately \$56 million in unpaid shipments in fiscal year 2010.

25. On April 6, 2011, the day after this public announcement, the price of AMSC's common stock dropped approximately 42 percent (from a close of \$24.88 per share on April 5, 2011 to a close of \$14.47 per share on April 6, 2011).

26. By selling AMSC shares and covered calls the day prior to the company's announcement of negative news, Cancian made profits and avoided losses of \$46,930.

27. Cancian knew or recklessly disregarded that he traded AMSC securities while in possession of material nonpublic information that was conveyed to him in breach of a fiduciary duty or obligation.

28. Cancian knew that his friend, the insider, had access to confidential information about AMSC and was subject to restrictions regarding the use of such information.

29. The insider benefited personally by making a gift of confidential information to Cancian.

30. The information provided to Cancian by the insider about impending financial trouble at AMSC was not publicly known or disseminated at that time; rather AMSC restricted the information about the loss of business from Sinovel to select persons within AMSC and required them to keep the information confidential.

31. The nonpublic information provided to Cancian was material because it concerned a significant development at AMSC that was going to impact AMSC's financial results and stock price. A reasonable investor would have viewed this information as being important to his or her investment decision or a significant alteration of the total mix of information made available to the public about AMSC.

**CLAIM FOR RELIEF**  
**(Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)**

32. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 31 above.

33. By engaging in the conduct described above, Cancian, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or of a national securities exchange: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of

material facts or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon certain persons.

34. The conduct of Cancian involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

35. As a result, Cancian violated and, unless enjoined, will continue to 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].

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Cancian and each of his agents, servants, employees and attorneys and those persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of 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];

B. Require Cancian to disgorge his ill-gotten gains and losses avoided, plus pre-judgment interest;

C. Order Cancian to pay an appropriate civil monetary penalty;

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E Award such other and further relief as the Court deems just and proper.

**JURY DEMAND**

The Commission hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION**

By its attorneys,

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