

Sanjay Wadhwa
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281-1022
(212) 336-0181

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	<u>COMPLAINT</u>
	:	
VICTOR DOSTI	:	
and	:	ECF CASE
WHITTIER TRUST COMPANY,	:	
	:	
Defendants.	:	

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendants Victor Dosti (“Dosti”) and Whittier Trust Company (“Whittier”) (collectively, “Defendants”), alleges as follows:

SUMMARY

1. This case involves insider trading by defendant Dosti, a fund manager at defendant Whittier, who executed illicit trades in securities of Dell, Inc. (“Dell”), Nvidia Corporation (“Nvidia”), and Wind River Systems, Inc. (“Wind River”) based on material nonpublic information that Dosti obtained from his junior colleague Danny Kuo (“Kuo”), who was also employed as a fund manager at Whittier.

2. The material nonpublic information that Kuo provided to Dosti concerned Dell's and Nvidia's quarterly financial results and the acquisition of Wind River by Intel Corporation ("Intel"). Based on this inside information, Dosti and Kuo executed illegal trades in the securities of Dell, Nvidia, and Wind River for investment funds that they managed on behalf of Whittier (the "Whittier Funds"). As a result of Dosti and Kuo's insider trading in 2008, 2009, and 2010, the Whittier Funds generated illicit profits and wrongfully avoided losses in excess of \$724,000.

Insider Trading in the Securities of Dell

3. During at least 2008, a Dell employee (the "Dell Insider") passed material nonpublic information regarding Dell to Sandeep Goyal ("Goyal"), an analyst at a New York-based investment adviser who had previously worked at Dell. This material nonpublic information included quarterly earnings information and other performance data regarding Dell that the Dell Insider obtained in advance of Dell's quarterly earnings announcements.

4. Goyal, in turn, passed this material nonpublic information to Jesse Tortora ("Tortora"), who at the time was an analyst at the investment adviser firm Diamondback Capital Management, LLC ("Diamondback").

5. Tortora, who was a member of a group of hedge fund analysts who regularly shared material nonpublic information regarding technology companies, passed the material nonpublic information that he received from Goyal to other members of the group, including Kuo.

6. Shortly after receiving the Dell inside information from Tortora, Kuo communicated the information to Dosti. Based on this information, Dosti and Kuo

executed trades in Dell securities on behalf of one of the Whittier Funds. Trading in anticipation of quarterly earnings announcements made by Dell in May 2008 and August 2008, Dosti and Kuo generated profits and avoided losses of more than \$180,000.

Insider Trading in the Securities of Nvidia

7. During at least 2009 and 2010, Kuo regularly obtained material nonpublic information concerning Nvidia's calculation of its revenues, gross profit margins, and other financial metrics prior to the company making these figures public in its quarterly earnings announcements. Kuo obtained this information from Hyung Lim ("Lim"), who had himself obtained the inside information from a friend who was an employee in Nvidia's finance department (the "Nvidia Insider").

8. Shortly after obtaining the information from Lim, Kuo passed it to Dosti, who caused the Whittier Funds to execute trades in Nvidia securities in advance of the company's earnings announcements in May 2009, November 2009, and November 2010. As a result of these trades, the Whittier Funds generated profits and avoided losses of approximately \$295,000.

Insider Trading in the Securities of Wind River

9. In 2009, Kuo obtained material nonpublic information from a friend who was employed at Intel (the "Intel Insider") concerning Intel's negotiations to acquire Wind River.

10. Kuo relayed the Intel Insider's information to Dosti. Based on that information, Dosti and Kuo purchased Wind River securities for the Whittier Funds in advance of the June 4, 2009 public announcement of Intel's plans to purchase Wind

River. As a result of that trading, the Whittier Funds generated more than \$247,000 in illicit gains.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

11. 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 each of the defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Commission also seeks disgorgement of ill-gotten gains or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. 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

12. 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].

13. 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 relevant period, shares of Dell, Nvidia, and Wind River were traded on the NASDAQ, an electronic stock market located in the Southern District of New York.

DEFENDANTS

14. **Dosti**, age 49, resides in San Marino, California. From 2004 through 2012, Dosti was employed as a fund manager at Whittier. During the relevant period, Dosti managed several investment funds on behalf of Whittier – the Whittier Long-Short Fund, LLC (“Whittier Long-Short Fund”); the Whittier Aggressive Growth Fund, LP and the Whittier Aggressive Growth Fund A, LP (collectively, “Whittier Aggressive Growth Fund”); and the Whittier Relative Growth Fund, LP and the Whittier Relative Growth Fund A, LP (collectively, “Whittier Relative Growth Fund”). Those funds are referred to in this Complaint collectively as the “Whittier Funds.”

15. **Whittier** is a trust company headquartered in South Pasadena, California, and registered with the California Department of Financial Institutions. It is not registered as a broker-dealer or as an investment adviser. Whittier provides a variety of fiduciary, family office, and wealth management services to its trust clients. During the relevant period, Whittier served as the manager and/or administrator of the Whittier Funds, which held assets worth as much as \$220 million. During the same period, the total value of Whittier’s assets under management was approximately \$3 billion.

RELEVANT INDIVIDUALS

16. **Kuo**, age 37, resides in Diamond Bar, California. From April 2008 until January 2012, he was employed as a vice president and fund manager at Whittier. During the relevant period, Kuo reported to Dosti and assisted Dosti in managing the Whittier Funds. Prior to his employment at Whittier, Kuo held Series 7, 86, and 87 licenses, which he obtained while employed as an analyst at Bear Stearns & Co., and a Series 63 license, which he obtained while employed at J.P. Morgan Securities, Inc.

RELEVANT ENTITIES

17. **Dell** is a Delaware corporation headquartered in Round Rock, Texas. Dell develops and sells computers and related products and services. Dell'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 "DELL."

18. **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."

19. **Wind River** was, prior to its acquisition by Intel on July 17, 2009, a Delaware corporation headquartered in Alameda, California that developed computer operating systems and software development tools. Before the acquisition, Wind River's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock was traded on the NASDAQ under the symbol "WIND."

FACTS

INSIDER TRADING IN THE SECURITIES OF DELL

20. During at least 2008, the Dell Insider regularly provided material nonpublic information concerning Dell's quarterly financial results to Goyal, who worked as an analyst at an investment adviser.

21. Goyal, who previously worked at Dell, was a friend of the Dell Insider and during the period that the Dell Insider was providing Goyal with inside information about Dell, the Dell Insider sought and received career advice from Goyal.

22. The Dell Insider's provision of this information to Goyal was in clear violation of the Dell Code of Conduct, which specifically prohibits "using any material inside information about Dell or any other company (such as [a] supplier or vendor) to trade any stock," and also prohibits "provid[ing] 'tips' or shar[ing] material inside information with any other person who might trade the stock."

23. Goyal passed the information that he received from the Dell Insider to his friend Tortora, an analyst at Diamondback. In exchange for Goyal providing material nonpublic information regarding Dell, Tortora and his supervisor at Diamondback arranged for Diamondback to make soft dollar payments¹ totaling at least \$175,000 to a brokerage account maintained by a nominee of Goyal. Goyal's nominee never performed any services for Diamondback that would warrant soft-dollar payments by Diamondback.

¹ "Soft dollars" are created when an investment firm causes its trading activity to be directed through a designated broker-dealer, and, in return, the broker-dealer credits the investment firm with a portion of the commissions or fees from the executed trading activity. These credits can then be used to pay for goods and services consumed by the investment firm, such as third-party research. The investment firm can direct the broker-dealer to pay a third-party research consultant directly (thereby utilizing the soft dollar credits it has accumulated with the broker-dealer).

24. After receiving the Dell information from Goyal, Tortora passed the information to several securities industry professionals – including Kuo – with whom Tortora regularly exchanged information regarding various technology companies.

25. Tortora informed Kuo that the information had come from a source within Dell. Kuo, in turn, passed the information to Dosti and informed him that the information had originated from a source at Dell.

26. Based on this inside information, Dosti and Kuo traded Dell securities on behalf of the Whittier Long-Short Fund from at least May through August 2008.

Dell's First Quarter 2008 Earnings Announcement

27. In the weeks leading up to Dell's May 29, 2008 announcement of its first quarter financial results (the three-month period from February 2, 2008 to May 2, 2008), the Dell Insider had several telephone calls with Goyal in which the Dell Insider provided Goyal with material nonpublic information. Beginning in at least early May, as Dell was in the initial stages of computing its financial results, the Dell Insider provided Goyal with preliminary estimates of the company's revenues and gross profit margin. Over time, as the company got closer to finalizing its earnings report, the information that the Dell Insider provided to Goyal became more precise.

28. Soon after each of his calls with the Dell Insider, Goyal called Tortora and passed along the information that the Dell Insider had provided. Shortly after speaking with Goyal, Tortora passed the information to Kuo.

29. On the evening of Monday, May 5, 2008, the Dell Insider passed Goyal material nonpublic information concerning Dell's first quarter results during a 71-minute telephone call. Approximately two minutes later, Goyal placed a call to Tortora, and then

called Tortora again about one hour later. After checking his voicemail, Tortora telephoned Goyal and the two spoke for 17 minutes.

30. The next day, May 6, 2008, Tortora placed a four-minute telephone call to Kuo. During that call, Tortora passed along the estimates of Dell's first quarter results that he had received from Goyal the night before (and which Goyal had received from the Dell Insider). Shortly thereafter, Kuo relayed this information to Dosti.

31. On May 7 and May 8, 2008, Dosti and Kuo arranged for the Whittier Long-Short Fund to purchase 3,600 shares of Dell stock.

32. On the evening of May 11, 2008, Goyal and the Dell Insider had a 32-minute telephone call. During that call, the Dell Insider provided updated details about Dell's first quarter results. Approximately one minute after that call ended, Goyal telephoned Tortora. About 15 minutes later, Goyal and Tortora had a 24-minute call in which Goyal provided Tortora with the information he had just received from the Dell Insider.

33. At 12:12 p.m. on May 12, 2008, Kuo sent an instant message to Tortora asking if there were "any positives out of dell recently?" Tortora responded that he would call Kuo with an update. Later that day, Tortora telephoned Kuo and during this 14-minute telephone call, Tortora provided Kuo with the positive Dell inside information he had obtained from Goyal the previous night. Kuo subsequently relayed that information to Dosti. On May 13, 2008, Dosti and Kuo arranged for the Whittier Long-Short Fund to buy 1,300 shares of Dell stock.

34. Goyal had another call with the Dell Insider on the evening of May 15, 2008. Minutes after completing his call with the Dell Insider, Goyal telephoned Tortora and provided Tortora with the Dell inside information he had just received.

35. On the morning of Friday, May 16, 2008, Goyal and Tortora had a brief email exchange in which they agreed that the numbers received from the Dell Insider indicated that Dell's earnings per share of common stock for the first quarter would be three cents above the then-current consensus among Wall Street analysts.

36. On the afternoon of May 16, 2008, Tortora sent an instant message to Kuo instructing him to call Tortora's cell phone. Kuo telephoned Tortora immediately and during the ensuing call Tortora passed the updated Dell inside information to Kuo. Kuo relayed that information to Dosti. During the next three trading days – May 19, May 20, and May 21, 2008 – Dosti and Kuo arranged for the Whittier Long-Short Fund to purchase 6,000 shares of Dell.

37. On May 29, 2008, Dosti and Kuo arranged for the Whittier Long-Short Fund to purchase 24,200 shares of Dell stock. Later that day, after the market close, Dell announced its first quarter financial results. The company reported adjusted earnings of \$0.38 per share, a number which – as Goyal's inside information had indicated – substantially exceeded analysts' consensus estimate of \$0.34 per share. The next day, Dell's share price, which had closed at \$21.81 just before the announcement, increased more than 5 percent to a close at \$23.06. Approximately 40 minutes after Dell's May 29 earnings announcement, Kuo sent an instant message to Tortora saying "nice call on Dell."

38. As a result of its illicit trading in Dell securities in advance of the company's May 29, 2008 earnings announcement, the Whittier Long-Short Fund generated at least \$103,000 in profits.

Dell's Second Quarter 2008 Earnings Announcement

39. The Dell Insider also provided Goyal with inside information concerning Dell's revenues and gross profit margin in advance of the company's August 28, 2008 announcement of its financial results for its second quarter (the period from May 3, 2008 to August 1, 2008).

40. As in the prior quarter, Goyal received updates as Dell revised its calculations in the weeks leading up to the announcement of its quarterly results. And, as in the prior quarter, Goyal provided the Dell inside information to Tortora, who passed it to Kuo, who then passed it to Dosti.

41. On the evening of August 4, 2008, during a 40-minute telephone call, the Dell Insider provided Goyal with updated inside information concerning Dell's second quarter financial results. At approximately 8:32 a.m. on August 5, 2008, Goyal telephoned Tortora and the two spoke for approximately ten minutes. During this call, Goyal communicated to Tortora the inside information he had received from the Dell Insider.

42. At approximately 8:41 a.m., Tortora sent an email to Kuo and others, in which he conveyed the inside information he had just received, including Dell's calculation of its revenues and gross margins.

43. Among other information, Tortora's email conveyed that Dell's then-current calculation of its gross profit margin for the second quarter was 17.5 percent,

which was significantly worse than the 18.3 percent figure that analysts were expecting at that time.

44. On the evening of August 14, 2008, the Dell Insider placed a 50-minute telephone call to Goyal and passed Goyal material nonpublic information, including that Dell's second quarter gross margin was still expected to be lower than analysts were predicting.

45. The following morning, August 15, 2008, a telephone number associated with Goyal's office placed a call to Tortora's mobile phone that lasted for approximately three minutes. At approximately 2:00 p.m. that afternoon, Tortora spoke with Goyal again.

46. On the next trading day, Monday, August 18, 2008, Tortora passed the update concerning Dell's disappointing gross margin results to Kuo and others. At approximately 12:09 p.m. on August 18, Tortora telephoned Kuo and spoke to him for approximately three minutes, and then called Kuo again at 12:12 p.m. and spoke to him for another three minutes. During these calls, Tortora passed the updated information concerning Dell's worse-than-expected results to Kuo, who then relayed that information to Dosti.

47. About fifteen minutes after Kuo's second call with Tortora on August 18, 2008, the Whittier Long-Short Fund sold 9,300 shares of Dell stock (approximately one-third of its total position).

48. On the evening of August 24, 2008, Goyal received another update from the Dell Insider. The following day, August 25, Goyal placed a telephone call to Tortora.

During this call, which lasted approximately two minutes, Goyal informed Tortora that Dell was still planning to announce a worse-than-expected gross margin.

49. Approximately 20 minutes after that call, Tortora sent an email to Kuo and others indicating that Tortora had done a new “dell check” and that it was the “same as before” and sounded bad for Dell. Kuo subsequently relayed that information to Dosti. On August 26, 27, and 28, 2008, Dosti and Kuo arranged for the Whittier Long-Short Fund to sell more than 13,000 shares of Dell stock.

50. After the close of regular market trading on August 28, 2008, Dell announced its second quarter financial results. Its announcement of a gross margin of 17.2 percent was substantially worse than the 18.4 percent that analysts had expected just prior to the announcement. The following day, Dell’s share price dropped more than 13 percent, from \$25.21 at the close of trading on August 28 to \$21.73 at the close of trading on August 29.

51. Minutes after Dell’s disappointing announcement, Kuo sent an instant message to Tortora stating: “nice call on Dell.”

52. Between July 8, 2008 and August 28, 2008, Dosti and Kuo had arranged for the Whittier Long-Short Fund to sell approximately 28,500 shares of Dell stock, or 75 percent of its preexisting Dell position. By executing these sales in advance of the announcement of Dell’s disappointing second quarter results, the Whittier Long-Short Fund avoided losses of more than \$78,000.

INSIDER TRADING IN THE SECURITIES OF NVIDIA

53. In addition to engaging in insider trading in the securities of Dell, defendants Dosti and Whittier placed illegal trades in the securities of Nvidia based on material nonpublic information that Kuo obtained from his friend Lim.

54. During at least 2009 and 2010, Lim obtained material nonpublic information concerning Nvidia's anticipated quarterly earnings announcements from a friend employed at Nvidia – the Nvidia Insider – and relayed it to Kuo, who, in turn, relayed the information to Dosti. Lim told Kuo that the information had originated from an employee at Nvidia, and Kuo informed Dosti of this fact.

55. As an employee of Nvidia's finance department, the Nvidia Insider had access to Nvidia's calculation of its quarterly financial results. The Nvidia Insider regularly provided Lim with nonpublic information concerning Nvidia's quarterly results prior to the company announcing this information to the public.

56. The Nvidia Insider's provision of this information to Lim was a clear violation of the company's policies, which forbade employees from discussing material nonpublic information about Nvidia with anyone outside the company. The policy specifically listed financial results as an example of information that the company considered to be material.

57. In exchange for receiving material nonpublic information about Nvidia, Kuo paid Lim \$15,000 through direct and indirect means. On one occasion, Kuo wired \$5,000 to a Las Vegas bookmaker to pay off a debt of Lim's. On two other occasions, Kuo paid Lim by giving him cash. Kuo also compensated Lim by providing him with an insider trading tip concerning Intel's plans to acquire Wind River.

58. Using material nonpublic information obtained from the Nvidia Insider, Dosti and Kuo traded Nvidia securities on behalf of the Whittier Funds in advance of the company's quarterly earnings announcements on May 7, 2009, November 5, 2009, and November 11, 2010. As a result of these illegal trades, the Whittier Funds reaped ill-gotten profits and avoided losses of approximately \$295,000.

Nvidia's First Quarter 2010 Earnings Announcement

59. 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 conveyed that information to Kuo, who passed it to Dosti, who then caused the Whittier Funds to trade based on the information.

60. 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. Lim relayed this information to Kuo, who relayed it to Dosti. Based on this information, Dosti and Kuo arranged for the Whittier Funds to sell 12,000 shares of Nvidia stock on April 15, 2009, and an additional 5,000 shares on April 20, 2009.

61. 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 Tortora and others in which he summarized the inside information he had 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.

62. 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.

63. On Monday, May 4, 2009, Kuo emailed Dosti to advise him 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. Dosti responded, "[L]et's look at this some more after close today."

64. Lim spoke to the Nvidia Insider again on May 5, 2009, and, the following morning, spoke to Kuo for over 12 minutes. Kuo relayed the Nvidia information he obtained from Lim to Dosti.

65. Based on the Nvidia Insider's material nonpublic information, Dosti and Kuo arranged for one of the Whittier Funds to sell approximately 29,000 shares of Nvidia stock between May 5 and May 7, 2009 and to establish a short position in advance of Nvidia's quarterly earnings announcement on the evening of May 7, 2009.²

² "Establishing 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

66. After the close of regular market 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, 2009, 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.

67. By trading on the basis of material nonpublic information obtained from the Nvidia Insider concerning Nvidia's May 7, 2009 earnings announcement, the Whittier Funds avoided losses and generated short sale profits in excess of \$144,000.

Nvidia's Third Quarter 2010 Earnings Announcement

68. 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, Dosti and Kuo used this information to trade Nvidia securities and generate ill-gotten gains for the Whittier Funds.

69. 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

purchase because the short seller has sold the security at a price that is greater than the purchase price.

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 later, Kuo telephoned Dosti and spoke to him for approximately 11 minutes, conveying the Nvidia information he had just received.

70. The next day, November 5, 2009, Dosti arranged for one of the Whittier Funds to purchase nearly 46,000 shares of Nvidia stock.

71. After the market close on November 5, 2009, 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 Dosti's purchases of Nvidia stock on November 5, the Whittier Funds generated profits of more than \$44,000.

Nvidia's Third Quarter 2011 Earnings Announcement

72. 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, the Whittier Funds managed by Dosti and Kuo executed profitable trades based on this inside information, which was ultimately disclosed to the public in a quarterly earnings announcement on November 11, 2010.

73. On the evening of November 2, 2010, 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. Kuo relayed the information to Dosti. The next day, November 3, 2010, Dosti and Kuo arranged for one of the Whittier Funds to purchase 7,400 shares of Nvidia stock.

74. On November 4, 2010, Kuo sent an email to Tortora and an employee of another hedge fund in which Kuo relayed the inside information he had obtained from Lim on November 2, 2010. 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, Dosti and Kuo arranged for the Whittier Funds to purchase an additional 17,200 shares of Nvidia stock.

75. 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. Kuo subsequently relayed the information to Dosti.

76. On November 10 and 11, 2010, Dosti and Kuo added to their Nvidia long position by arranging for the Whittier Funds to purchase approximately 54,000 shares of Nvidia stock and to sell short 200 Nvidia put options.³

³ 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.

77. 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 two-and-a-half to five percent during its next fiscal quarter. As a result of this projection, which was substantially better than analysts' consensus estimate of one percent revenue growth, the price of Nvidia stock rose over five percent and closed at \$13.26 per share on November 12, 2010.

78. As a result of Dosti and Kuo's purchase of Nvidia stock and short sale of Nvidia put options in advance of the company's November 11, 2010 earnings announcement, the Whittier Funds generated profits in excess of \$105,000.

INSIDER TRADING IN THE SECURITIES OF WIND RIVER

79. From at least March 2009 through June 2009, Kuo obtained nonpublic information from a friend who worked at Intel – the Intel Insider – concerning Intel's secret negotiations to buy Wind River. Based on this material nonpublic information, Dosti and Kuo purchased Wind River securities on behalf of the Whittier Funds from late March through May 2009 and generated substantial profits when Intel's agreement to purchase Wind River was announced to the public on June 4, 2009.

80. The Intel Insider's provision of this information to Kuo was a clear violation of Intel's policies, which forbade its employees from discussing such material nonpublic information with persons outside the company. Dosti and Kuo both knew that the information they received about Intel's plans to acquire Wind River had been obtained in violation of an Intel employee's obligation to keep that information secret.

81. On or about March 26, 2009, the Intel Insider tipped Kuo concerning Intel's negotiations to acquire Wind River. The next day, March 27, 2009, Kuo arranged for one of the Whittier Funds to purchase 20,000 shares of Wind River stock. That same day, Kuo emailed Dosti concerning the purchase of Wind River stock and informed Dosti that he would explain the trade at a later date.

82. In the days that followed, Kuo informed Dosti of Intel's confidential discussions to acquire Wind River and of the fact that he had obtained this information from an Intel employee. Dosti and Kuo arranged for the Whittier Funds to purchase additional shares of Wind River stock in late March and April of 2009.

83. On the evening of May 11, 2009, Kuo and the Intel Insider spoke twice by telephone for a total of approximately four minutes. On the morning of May 12, 2009, Kuo emailed Dosti the information that he had obtained from the Intel Insider concerning Intel's negotiations to acquire Wind River, including details of the monetary terms each company was proposing for the deal. Kuo wrote: "Update on WIND: [Wind River] wanted \$12-13 and [Intel] wanted only up to \$10 After further discussions between the two companies, [Intel] has submitted a revised term sheet to [Wind River] mgmt./board at close to \$11, something around \$10.80; [Wind River] board will review the revised term sheet this week; Sounds like the deal might go through after all." The next day, May 13, 2009, one of the Whittier Funds managed by Dosti and Kuo purchased 40,000 shares of Wind River stock.

84. On June 4, 2009, Intel announced publicly that it would acquire Wind River for \$11.50 per share. As a result of this announcement, Wind River's stock price jumped to \$11.76 per share, a \$3.76 gain and 47 percent increase from the prior day's

closing price. As a result of Dosti and Kuo's illegal purchase of Wind River securities, the Whittier Funds reaped gains in excess of \$247,000.

CLAIMS FOR RELIEF

CLAIM I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Dosti and Whittier)

85. The Commission realleges and incorporates by reference paragraphs 1 through 84, as though fully set forth herein.

86. The information the Dell Insider provided to Goyal and that was later passed to Kuo, Dosti, and Whittier, was, in each case, material and nonpublic. In addition, the information was, in each case, considered confidential by Dell, the company that was the source of the information, and Dell had policies protecting confidential information.

87. The information the Nvidia Insider provided to Lim and that was later passed to Kuo, Dosti, and Whittier, was, in each case, material and nonpublic. In addition, the information was considered confidential by Nvidia, the company that was the source of the information, and Nvidia had policies protecting confidential information.

88. The information that the Intel Insider provided to Kuo regarding Intel's acquisition of Wind River and that was later passed to Dosti and Whittier, was, in each case, material and nonpublic. In addition, the information was considered confidential by Intel, the company that was the source of the information, and Intel had policies protecting confidential information.

89. Dosti and Whittier (by virtue of the knowledge of its employees Dosti and Kuo) knew, recklessly disregarded, or should have known, that the material nonpublic information that they received concerning Dell, Nvidia, and the Wind River acquisition was disclosed or misappropriated in breach of a fiduciary duty, or a similar relationship of trust and confidence.

90. Dosti and Whittier (by virtue of the knowledge and actions of Dosti and Kuo) are liable for the trading of the Whittier Funds because each directly or indirectly effectuated trades by the funds and/or unlawfully disclosed material nonpublic information to the funds.

91. By virtue of the foregoing, Dosti and Whittier, 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, each 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.

92. By virtue of the foregoing, Dosti and Whittier each 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
(Against Dosti and Whittier)

93. The Commission realleges and incorporates by reference paragraphs 1 through 92, as though fully set forth herein.

94. By virtue of the foregoing, Dosti and Whittier, 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: (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.

95. By reason of the conduct described above, Dosti and Whittier each 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 defendants Dosti and Whittier, 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.

Permanently restraining and enjoining defendants Dosti and Whittier, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

III.

Ordering defendants Dosti and Whittier to each 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;

IV.

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

V.

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

Dated: New York, New York
June 7, 2013

Sanjay Wadhwa

Sanjay Wadhwa
Senior Associate Director
Attorney for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, New York 10281-1022
(212) 336-0181
WadhwaS@sec.gov

Of Counsel:

Joseph G. Sansone (SansoneJ@sec.gov)
Stephen A. Larson (LarsonSt@sec.gov)
Matthew Watkins (WatkinsMa@sec.gov)
Daniel R. Marcus (MarcusD@sec.gov)