

U.S. ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK AND U.S. SECURITIES AND EXCHANGE COMMISSION INVESTIGATE MASSIVE INSIDER TRADING RING

November 22, 2010

To Our Clients and Friends:

News reports indicate that federal authorities, including the U.S. Attorney's Office for the Southern District of New York and the U.S. Securities and Exchange Commission, have been conducting an expansive, three-year investigation into alleged insider trading activity across a number of industries, both on and off Wall Street, and just this morning, the FBI conducted searches at hedge-fund offices in Connecticut. Although charges have not yet been filed or specific details made public, these reports are consistent with recent commitments by Preet Bharara, U.S. Attorney for the Southern District of New York, and Robert Khuzami, SEC Director of Enforcement, to make insider trading a top priority and aggressively use investigative techniques – including wiretaps – that have traditionally been reserved for organized crime and complex narcotics cases.

SCOPE OF THE INSIDER TRADING INVESTIGATION

According to *The Wall Street Journal* and other news outlets, the alleged insider trading schemes have reaped tens of millions of dollars and involve independent consultants and analysts passing non-public information to hedge funds and mutual funds, and investment banks leaking information about future corporate transactions, such as health-care and technology company mergers. The investigation supposedly focuses on investment bankers, hedge-fund and mutual-fund traders and analysts, and expert-network consultants, the latter of whom are former or current employees in specific industries who are hired by investment firms to provide advice on developments in those industries. Federal officials appear to be placing particular emphasis on expert-network consultants.

INSIDER TRADING LIABILITY

As a reminder, insider trading involves: (i) purchasing or selling a security; (ii) while in knowing possession of, or on the basis of; (iii) material, non-public information; (iv) in violation of a duty or a commitment not to trade; (v) with willfulness or recklessness.

Tipsters – those who pass along information – may be liable if they provide material, non-public information to another for personal gain, which is not limited to financial benefit, but also would include non-financial gain, such as enhancement of the tipper's reputation, or indirect gain, such as benefits to a family member. The recipient who trades on material, non-public information – the

tippee – also can be liable for insider trading, as long as the tippee is aware that the information was obtained in violation of the tipper’s duty to the source of the material information. Additionally, tippee liability can extend beyond a first-generation recipient and cascade down the information’s distribution chain. Thus, although typically harder to prove, subsequent generations of tippees who trade on material, non-public information can, under certain circumstances, also be held liable.

Under federal law, criminal insider trading violations are subject to imprisonment up to twenty years, and fines up to \$5 million for individuals and \$25 million for companies; civil violations are subject to fines up to three-times the violator’s gain (either profit or loss avoided), disgorgement of gain, director and officer bars, and injunctions or cease-and-desist orders.

CONTINUED FOCUS ON INSIDER TRADING

Over the past two years, federal authorities have targeted illegal insider trading activity and committed tremendous resources to investigations and prosecutions.

The SEC has demonstrated a renewed focus on insider trading by creating several new offices, including the Office of Market Intelligence, to collect, assess and prioritize complaints and tips received by the Commission; and the Market Abuse Investigative Group within the Division of Enforcement, to address potential large-scale insider trading and market manipulation. In addition, the SEC recently ramped up its Office of Risk Assessment, which is responsible, in part, for early identification of new or resurgent forms of fraud and illegal or questionable activities. The U.S. Attorney’s Office also has declared war on insider trading. As recently as last month, Mr. Bharara reiterated that insider trading is a “top criminal priority” of his office.

A measure of the federal commitment to this issue is the authorities’ recent and unprecedented use of investigative techniques that historically have been reserved for racketeering, organized crime and complex narcotics investigations. A year ago, Mr. Khuzami said that “[p]ersons involved in illegal insider trading schemes now must rightly consider whether their conversations are under surveillance.” Last month, Mr. Bharara defended the use of wiretaps and other unorthodox investigative tools, stating that prosecutors must use “every lawful investigative tool available to investigate and prosecute.” In 2009, wiretaps were used in an insider trading investigation; that of the Galleon Group hedge fund. To date, Galleon appears to be the largest U.S. insider trading case, with more than twenty people having been arrested so far.

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Various media have reported that federal authorities are likely to bring charges in this additional and rapidly unfolding insider trading investigation before year end, and such speculation is likely to be fueled by today’s FBI raids. Given its high profile and the fact that key legal questions in the

Galleon insider trading case – including questions concerning the use of wiretaps in insider trading cases – are still being litigated in federal court, we anticipate this latest case to have a significant impact on standards for assessing insider trading liability, and on internal company programs designed to insure compliance with those requirements.

It is entirely appropriate for companies or firms that may be a subject of this investigation to provide guidance to employees concerning their responses to contacts by the Federal Bureau of Investigation or any other investigative agency.

Please feel free to contact us with any questions.

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| Mark P. Goodman +1 212 909 7253 mpgoodman@debevoise.com | Anne E. Cohen +1 212 909 6078 aecohen@debevoise.com | Helen V. Cantwell +1 212 909 6312 hvcantwell@debevoise.com | Sean Hecker +1 212 909 6052 shecker@debevoise.com |
| Andrew J. Ceresney +1 212 909 6947 ajceresney@debevoise.com | Jonathan R. Tuttle +1 202 383 8124 jrtuttle@debevoise.com | W. Neil Eggleston +1 202 383 8140 wneggleston@debevoise.com | Aaron M. Tidman +1 202 383 8247 atidman@debevoise.com |