

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
:
UNITED STATES OF AMERICA :
:
-v.- :
: INFORMATION
STEVEN FORTUNA, :
: 09 Cr. ____
:
Defendant. :
:
- - - - - X

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The United States Attorney charges:

Relevant Entities and Individuals

1. At all times relevant to this Information, STEVEN FORTUNA, the defendant, worked as a Managing Director of S2 Capital LLC, a hedge fund based in Boston, Massachusetts ("S2").

2. At all times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-1") served as a Managing Director of a hedge fund based in New York, New York.

3. At all times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-2") served as a Managing Director of S2.

The Insider Trading Scheme

4. From in or about July 2008 through in or about March 2009, STEVEN FORTUNA, the defendant, CC-1, CC-2, and others known and unknown, conspired to engage in insider trading. CC-1 obtained material, nonpublic information ("Inside Information")

regarding certain technology companies from inside sources, who provided the Inside Information to CC-1 in violation of duties of trust and confidence. CC-1 then provided certain of this Inside Information to FORTUNA, the defendant, knowing that he intended to trade securities on the basis of the Inside Information. FORTUNA executed securities transactions on the basis of the Inside Information obtained from CC-1. CC-1 provided the Inside Information to FORTUNA as a benefit because they were friends and because, in exchange, FORTUNA provided CC-1 with information and trading advice regarding certain technology, oil and energy companies.

5. For example, on or about July 24, 2008, CC-1 obtained Inside Information regarding a certain technology company (the "Technology Company") that was scheduled to announce its quarterly earnings the following week. CC-1 learned from an employee of the Technology Company (the "Employee") that the company's guidance for the following quarter's revenue would miss analysts' expectations and that, internally, the company believed that its stock price would fall following the quarterly earnings announcement (the "Technology Company Inside Information"). The Technology Company Inside Information was provided to CC-1 in violation of (a) the fiduciary and other duties of trust and confidence owed by the Employee to the Technology Company; (b) the expectation of confidentiality of the Technology Company; and (c)

the Technology Company's written policies regarding the use and safekeeping of Inside Information. On or about July 25, 2008, CC-1 provided certain of the Technology Company Inside Information to STEVEN FORTUNA, the defendant, who, along with his partner, CC-2, executed transactions in the securities of the Technology Company on the basis of this Inside Information, knowing that it had been obtained in violation of fiduciary and other duties of trust and confidence.

6. In addition, in or about August, September and October 2008, CC-1 obtained material, nonpublic information regarding the plans of a certain semiconductor company (the "Semiconductor Company") to spin off its manufacturing operations into a separate entity (the "Semiconductor Company Inside Information"). CC-1 obtained the Semiconductor Company Inside Information from an executive of the Semiconductor Company, from an executive of a different technology company involved in the deal, and from one or more other individuals. The Semiconductor Company Inside Information was obtained in violation of duties of trust and confidence. CC-1 provided certain of the Semiconductor Company Inside Information to STEVEN FORTUNA, the defendant, who, along with his partner, CC-2, executed transactions in the securities of the Semiconductor Company on the basis of this information, knowing that it had been obtained in violation of duties of trust and confidence.

7. STEVEN FORTUNA, the defendant, and CC-2 earned a profit for their hedge fund, S2, of approximately \$2.4 million from trading on the basis of the Technology Company Inside Information and the Semiconductor Company Inside Information.

The Conspiracy

8. From at least in or about July 2008 up to and including in or about March 2009, STEVEN FORTUNA, the defendant, CC-1, CC-2, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

9. It was a part and an object of the conspiracy that STEVEN FORTUNA, the defendant, CC-1, CC-2, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing

devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting 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; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

10. Among the means and methods by which STEVEN FORTUNA, the defendant, CC-1, CC-2, and their co-conspirators would and did carry out the conspiracy were the following:

a. CC-1 obtained the Technology Company Inside Information and the Semiconductor Company Inside Information, which information was provided in violation of duties of trust and confidence.

b. CC-1 provided the Technology Company Inside Information and the Semiconductor Company Inside Information to FORTUNA with the understanding that FORTUNA would use the information to execute securities transactions.

c. FORTUNA and CC-2 executed securities trades based on the Technology Company Inside Information and the Semiconductor Company Inside Information.

Overt Acts

11. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN FORTUNA, the defendant, CC-1, CC-2, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about July 25, 2008, FORTUNA called CC-1 while CC-1 was located in New York, New York.

b. On or about July 25, 2008, FORTUNA sold short approximately 150,000 shares of stock in the Technology Company, and purchased approximately 2,000 put option contracts in the Technology Company.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Securities Fraud)

The United States Attorney further charges:

Relevant Entities and Individuals

12. The allegations contained in paragraph 1 are repeated and realleged as though fully set forth herein.

13. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-3") worked as an analyst for a hedge fund based in Chicago, Illinois.

The Insider Trading Scheme

14. From in or about July 2008 through in or about March 2009, STEVEN FORTUNA, the defendant, CC-3, and others known

and unknown, conspired to engage in insider trading. CC-3 obtained Inside Information regarding certain technology companies, including an information technology company headquartered in Massachusetts (the "Information Technology Company"), which information was provided in violation of (a) the fiduciary and other duties of trust and confidence owed by the source of the information to the Information Technology Company; (b) the expectation of confidentiality of the Information Technology Company; and (c) the Information Technology Company's written policies regarding the use and safekeeping of Inside Information. CC-3 then provided certain of this Inside Information to FORTUNA, for the purpose of trading securities on the basis of the Inside Information. CC-3 provided the Inside Information to FORTUNA for a benefit because they were friends, and because, in exchange, FORTUNA provided CC-3 with information and trading advice regarding certain technology companies.

The Conspiracy

15. From at least in or about July 2008 up to and including in or about March 2009, STEVEN FORTUNA, the defendant, CC-3, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal

Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

16. It was a part and an object of the conspiracy that STEVEN FORTUNA, the defendant, CC-3, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting 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; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

17. Among the means and methods by which STEVEN FORTUNA, the defendant, CC-3, and their co-conspirators would and did carry out the conspiracy were the following:

a. CC-3 obtained Inside Information pertaining to the Information Technology Company and other technology companies, which information was provided in violation of fiduciary and other duties of trust and confidence.

b. CC-3 provided this Inside Information to FORTUNA for the purpose of trading securities on the basis of the Inside Information.

Overt Acts

18. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN FORTUNA, the defendant, CC-3, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about October 2008, FORTUNA discussed Inside Information about the Information Technology Company over the telephone with CC-3.

(Title 18, United States Code, Section 371.)

COUNT THREE

(Conspiracy to Commit Securities Fraud)

The United States Attorney further charges:

Relevant Entities and Individuals

19. The allegations contained in paragraph 1 are repeated and realleged as though fully set forth herein.

20. At all times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-4") managed a

hedge fund based in Boston, Massachusetts.

The Insider Trading Scheme

21. From in or about July 2008 through in or about March 2009, STEVEN FORTUNA, the defendant, CC-4, and others known and unknown, conspired to engage in insider trading. CC-4 obtained Inside Information regarding certain technology companies, including a computer hardware company headquartered in Texas (the "Computer Hardware Company"), which information was provided in violation of (a) the fiduciary and other duties of trust and confidence owed by the source of the information to the Computer Hardware Company; (b) the expectation of confidentiality of the Computer Hardware Company; and (c) the Computer Hardware Company's written policies regarding the use and safekeeping of Inside Information. CC-4 then provided certain of this Inside Information to FORTUNA for the purpose of trading securities on the basis of the Inside Information. CC-4 provided the Inside Information to FORTUNA for a benefit because they were friends, and because, in exchange, FORTUNA provided CC-4 with information and trading advice regarding certain technology companies.

The Conspiracy

22. From at least in or about July 2008 up to and including in or about March 2009, STEVEN FORTUNA, the defendant, CC-4, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together

and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

23. It was a part and an object of the conspiracy that STEVEN FORTUNA, the defendant, CC-4, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting 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; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

24. Among the means and methods by which STEVEN FORTUNA, the defendant, CC-4, and their co-conspirators would and did carry out the conspiracy were the following:

a. CC-4 obtained Inside Information pertaining to the Computer Hardware Company and other technology companies, which information was provided in violation of fiduciary and other duties of trust and confidence.

b. CC-4 provided this Inside Information to FORTUNA for the purpose of trading securities on the basis of the Inside Information.

Overt Acts

25. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN FORTUNA, the defendant, CC-4, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about October 2008, FORTUNA discussed Inside Information about the Computer Hardware Company over the telephone with CC-4.

(Title 18, United States Code, Section 371.)

COUNT FOUR

(Securities Fraud)

The United States Attorney further charges:

26. The allegations contained in paragraphs 1-7, 10 and

11 of this Information are repeated and realleged as though fully set forth herein.

27. On or about July 25, 2008, in the Southern District of New York and elsewhere, STEVEN FORTUNA, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, FORTUNA executed transactions in the securities of the Technology Company on the basis of the Technology Company Inside Information that he had obtained from CC-1.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5; and
Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

28. As a result of committing one or more of the

foregoing securities fraud offenses, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 18, United States Code, Section 371, and Title 17, Code of Federal Regulations, Section 240.10b-5, as alleged in Counts One through Four of this Information, STEVEN FORTUNA, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses.

Substitute Assets Provision

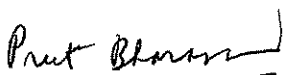
29. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

other property of the defendant up to the value of the forfeitable property described above.

(Title 15, United States Code, Sections 78j(b), 78ff;
Title 18, United States Code, Sections 371 and 981(a)(1)(C);
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461(c);
and Title 17, Code of Federal Regulations,
Section 240.10b-5.)



PREET BHARARA *PJB*
United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES

-v-

STEVEN FORTUNA

INFORMATION

09 Cr.

PREET BHARARA
United States Attorney.

18 U.S.C. § 371; 17 U.S.C. §§ 78j(b)
and 78ff; 17 C.F.R. § 240.10b-5
