

Approved:

JOSHUA KLEIN  
JONATHAN STREETER  
Assistant United States Attorneys

ANDREW MICHAELSON  
Special Assistant United States Attorney

Before: THE HONORABLE THEODORE H. KATZ  
United States Magistrate Judge  
Southern District of New York

----- X

UNITED STATES OF AMERICA

-v.-

ALI HARIRI,

Defendant.

COMPLAINT

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

COUNTY OF OFFENSE:  
NEW YORK

----- X

SOUTHERN DISTRICT OF NEW YORK, ss.:

B. J. KANG, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

(Conspiracy)

1. From at least in or about 2008 up to and including in or about March 2009, in the Southern District of New York and elsewhere, ALI HARIRI, the defendant, 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) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

2. It was a part and object of the conspiracy that ALI HARIRI, the defendant, 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, Section 240.10b-5.

#### Overt Acts

3. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about January 12, 2009, at approximately 12:37 p.m. Pacific Time, ALI HARIRI, the defendant, called an individual who subsequently became a cooperating witness ("CW").

b. On or about February 2, 2009, the CW, using a prime broker located in New York, New York, caused the purchase of approximately 350,660 shares of stock in Atheros Communications, Inc. ("Atheros"), which traded on the NASDAQ under the symbol "ATHR."

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

#### COUNT TWO

(Securities Fraud)

4. On or about January 30, 2009, in the Southern District of New York and elsewhere, ALI HARIRI, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and 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, HARIRI provided material, nonpublic information regarding Atheros to the CW, who caused the purchase of 150,000 shares of Atheros stock on the basis of the information provided by HARIRI.

(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.)

The basis for my knowledge and the foregoing charge is, in part, as follows:

5. I have been a Special Agent with the FBI for approximately five years. I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in numerous investigations of such offenses and I have made and participated in making arrests of individuals for participating in such offenses.

6. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (a) publicly available documents, (b) information provided to me by the CW, and (c) court-authorized wiretaps on certain telephone lines, as is further described below. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part unless indicated otherwise. Where figures and calculations are set forth herein, they are approximate.

#### Relevant Entities and Individuals

7. Based on information available to the public over the Internet, and on information provided to me by the CW, I am aware of the following:

a. At all times relevant to this Complaint, Atheros operated as a company that develops semiconductor system solutions for wireless and other network communications products. Atheros is headquartered in California.

b. At all times relevant to this Complaint, ALI HARIRI, the defendant, served as a Vice President of Atheros' Broadband Carrier Networking Business Unit.

### Insider Trading Scheme

#### General Overview

8. Based on all of the sources of information referenced herein, including all of the facts and circumstances described in detail below, I have probable cause to believe the following:

a. From at least in or about 2008 through in or about March 2009, ALI HARIRI, the defendant, the CW, and others known and unknown, conspired to and did engage in a scheme to defraud by disclosing material, nonpublic information and/or executing securities transactions based on material, nonpublic information pertaining to Atheros.

b. The means by which HARIRI and the CW effectuated the fraudulent scheme were as follows: HARIRI disclosed to the CW material, nonpublic information regarding Atheros (the "Atheros Inside Information") in violation of duties of trust and confidence. HARIRI provided the Atheros Inside Information to the CW because they were friends, and because, in exchange, the CW advised HARIRI to buy and/or sell the securities of other companies based on information that the CW had obtained from sources at those companies. The CW executed securities transactions based on the Atheros Inside Information, earning a total profit of approximately \$870,000 from the scheme.

#### The CW's Interactions with HARIRI

9. Beginning in or about April 2009, I have had numerous discussions with the CW.<sup>1</sup> During all times relevant to

---

<sup>1</sup> The CW is an individual who, while working at a hedge fund, executed securities transactions based on material, nonpublic information. The CW pleaded guilty to charges of conspiracy and securities fraud in connection with this conduct and has agreed to cooperate with the Government in the hope of receiving a reduced sentence. The information the CW has provided has been corroborated by, among other things, recorded phone conversations, trading records, pen register data, and telephone records.

this Complaint, the CW managed a hedge fund located in California (the "Hedge Fund"). Based on conversations with the CW, I learned that the CW has known ALI HARIRI, the defendant, for at least 10 years. Based on intercepted wire communications, information provided by the CW, and a review of trading records and other documents, I believe that since at least in or about 2008, HARIRI and the CW conspired to engage in an insider trading scheme pursuant to which HARIRI provided the CW with Atheros Inside Information.

#### Interception of Wire Communications

10. In connection with the investigation, approval was obtained on or about October 14, 2008, and then again on December 5, 2008, to conduct court-authorized interception of wire communications over a landline used by the CW (the "Hedge Fund Office Phone"), and the cell phone used by a partner of the CW (the "CW Partner Cell Phone"). On or about January 6, 2009, approval was obtained to conduct court-authorized interception of wire communications over the Hedge Fund Office Phone, the CW Partner Cell Phone, and a cell phone used by the CW (the "CW Cell Phone").<sup>2</sup>

#### Atheros' Announcement of December 17, 2008

11. Based on my review of documents available to the public over the Internet, I have learned that ALI HARIRI, the defendant, was, at all times relevant to this Complaint, an executive of Atheros. Atheros' Code of Ethics and Business Conduct for Employees, Officers and Directors, which I have reviewed, provides: "It is usually illegal to buy or sell securities using material information not available to the public. Persons who give such undisclosed 'inside' information to others may be as liable as persons who trade securities while possessing such information. Securities laws may be violated if you, or any relatives or friends trade in securities of [Atheros], or any of its customers or vendors, while possessing inside information...."

12. Based on information provided to me by the CW, I learned that on or about December 17, 2008, ALI HARIRI, the defendant, informed the CW that Atheros would announce that day that it would revise downward the guidance that the company had

---

<sup>2</sup> The summaries of the intercepted calls that are set forth in this Complaint are based on preliminary draft transcripts prepared from the recordings, which I have reviewed and which are subject to revision.

provided regarding its performance for the fiscal quarter ending in December 2008. The CW further informed me that s/he sold short shares of Atheros stock on the basis of the information provided by HARIRI.

13. The information provided to me by the CW described above in paragraph 12 is corroborated by documents publicly available over the Internet, phone records, intercepted wire communications, and account records provided by the Hedge Fund's prime broker (the "Prime Broker"),<sup>3</sup> as follows:

a. On or about December 17, 2008, at approximately 12:36 p.m. Eastern Time, there was a call from a phone number subscribed to ALI HARIRI, the defendant, to the CW Cell Phone, which lasted approximately 10 minutes.

b. On or about December 17, 2008, the Hedge Fund sold short approximately 331,017 shares of Atheros stock at a price of approximately \$16.11 per share.

c. On or about December 17, 2008, following the close of the market, Atheros announced that it expected earnings of 14 cents to 19 cents per share, before items, on revenue of \$95 million to \$100 million, for the fiscal quarter ending in December 2008. The company had previously forecast earnings of approximately 38 cents per share, before items, on revenue of approximately \$135 million. At the time of the announcement, analysts expected earnings of 36 cents per share on revenue of \$131 million. On the following day, Atheros opened trading at \$14.86 per share, down approximately \$1.14, or seven percent, from the previous day's close.

d. On or about December 17, 2008, at approximately 7:08 p.m. Eastern Time, the CW's partner (the "CW Partner") called the CW on the CW Partner Cell Phone. During the call, which was intercepted and a recording of which I have reviewed, the CW and the CW Partner discussed whether the CW should inform "my friend at Atheros" that s/he had sold short stock in Atheros. The CW said, "I've probably made him, you know, between 50 to 80 grand this year on the stock tips that I've given him. So he knows the puts and takes." The CW Partner told the CW that his/her preference was to inform the source. The CW agreed, and said, "You know, we play. We are big boys.... I don't want to catch him off guard. God forbid... something happens, you know, I don't

---

<sup>3</sup> The prime brokerage services used by the Hedge Fund were located in New York, New York.

want him to sort of be caught off guard, right?"

e. The Hedge Fund covered the shares of Atheros that had been sold short, as described above, on December 17, 2008, at a price of \$14.88 per share, and on December 18, 2008, at a price of \$14.52 per share, for a profit of approximately \$480,000.

Atheros' Announcement of February 2, 2009

14. Based on the information set forth in paragraph 15 below, I have probable cause to believe that in or about January 2009, ALI HARIRI, the defendant, provided the CW with information regarding Atheros' actual revenue for the fiscal quarter ending in December 2008. The CW purchased shares of Atheros stock on the basis of the information provided by HARIRI in one or more accounts affiliated with the Hedge Fund. Finally, based on the information set forth in paragraph 15 below, and information provided to me by the CW, I know that HARIRI provided the CW with material, nonpublic information regarding Atheros' revenue for the quarter ending in December 2008 because they were friends and that, in exchange, the CW provided HARIRI with stock tips.

15. Based on documents publicly available over the Internet, phone records, intercepted wire communications, and account statements provided by the Prime Broker, I have learned the following:

a. On or about January 5, 2009, at approximately 1:54 p.m. Eastern Time, the CW used the Hedge Fund Office Phone to call a hedge fund manager located in New York, New York. During that call, which was intercepted and a recording of which I have reviewed, the CW indicated that "the street" expected Atheros to have quarterly revenue of \$97 million. The CW indicated that Atheros "will do 98, 99" million. Referring to Atheros stock, the CW said "you can buy it." The CW said that s/he asked "him" if Atheros had "any margin issues," and "he said no."

b. On or about January 12, 2009, at approximately 3:37 p.m. Eastern Time, ALI HARIRI, the defendant, called the CW on the CW Cell Phone. During that call, which was intercepted and a recording of which I have reviewed, the CW informed HARIRI that s/he was purchasing stock in Atheros. HARIRI thought that was a "good idea." The CW and HARIRI discussed Atheros' revenue for the quarter ending in December 2008. HARIRI indicated that it will "add up to 98 or 99 [million dollars]."

c. On or about January 13, 2009, at approximately

4:34 p.m. Eastern Time, the CW used the CW Cell Phone to call HARIRI. During that call, which was intercepted and a recording of which I have reviewed, HARIRI informed the CW that Atheros' guidance for the fiscal quarter ending in March 2009 could fall into the "80s." The CW then told HARIRI that s/he would be meeting with two different technology companies located in California, and that s/he could provide HARIRI with "their numbers." The CW and HARIRI scheduled a time to meet.

d. On or about January 15, 2009, at approximately 1:04 p.m. Eastern Time, HARIRI called the CW on the CW Cell Phone. During that call, which was intercepted and a recording of which I have reviewed, HARIRI asked the CW a question about information that the CW had provided HARIRI regarding a certain technology company located in California (the "Tech Company"). HARIRI asked if the source of the information was a particular individual who worked at the Tech Company, and the CW replied that it was. On or about January 15, 2009, HARIRI purchased 1,500 shares of stock in the Tech Company in his personal brokerage account.

e. On or about January 16, 2009, at approximately 12:56 p.m. Eastern Time, HARIRI called the CW on the CW Cell Phone. During that call, which was intercepted and a recording of which I have reviewed, the CW advised HARIRI to buy shares of stock in the Tech Company just before it was scheduled to announce quarterly earnings. The CW then provided HARIRI with specific information regarding the Tech Company's revenue for the quarter ending in December 2008.

f. Between on or about January 5, 2009 and on or about February 2, 2009, the Hedge Fund purchased approximately 1,080,660 shares of Atheros stock at prices ranging from \$11.84 to \$15.30 per share, and it sold approximately 330,000 shares of Atheros stock at prices ranging from \$13.10 to \$13.49 per share. The Hedge Fund's purchases included two purchases on January 30, 2009 that totaled approximately 150,000 shares (100,000 shares for \$12.02 per share, and 50,000 shares for \$12.05 per share), and two purchases on February 2, 2009 that totaled 350,660 shares (100,000 shares for \$11.84 per share, and 250,660 shares for \$12.15 per share).

g. On or about February 2, 2009, following the close of the market, Atheros announced its quarterly earnings for the quarter ending in December 2008. At the time of the announcement, the Hedge Fund held approximately 900,660 shares of Atheros stock (or more than \$10 million). The company announced quarterly revenue of \$98.3 million, exceeding analysts' expectations of \$97 million. On a conference call that followed



the announcement, Atheros provided guidance that revenue for the following quarter would be approximately \$80.6 to \$86.5 million. On the following day, shares of Atheros opened trading at \$12.87 per share, up approximately \$0.78, or six percent, over the previous day's close.

h. On or about February 3, 2009, the Hedge Fund sold 550,550 shares of Atheros stock at a price of approximately \$13.09 per share. Between February 4, 2009 and February 6, 2009, the Hedge Fund sold an additional 150,110 shares of Atheros stock at prices ranging from \$13.36 to \$14.91 per share. The Hedge Fund realized a profit of approximately \$390,000 on these sales.

WHEREFORE, deponent prays that an arrest warrant be issued for the above-named defendant and that he be imprisoned or bailed as the case may be.

  
\_\_\_\_\_  
B. J. KANG  
SPECIAL AGENT  
FEDERAL BUREAU OF INVESTIGATION

NOV 04 2009

Sworn to before me this  
\_\_\_\_ day of November, 2009

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK