

Magistrate Judge Brian A. Tsuchida

FILED ENTERED
LODGED RECEIVED

DEC 17 2013

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

CERTIFIED TRUE COPY
ATTEST: WILLIAM M. McCOOL
Clerk, U.S. District Court
Western District of Washington

By 
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff

v.

BRIAN JORGENSEN and
SEAN STOKKE,
Defendants.

MAGISTRATE'S **MT13-613**
DOCKET NO.

COMPLAINT FOR VIOLATION
OF Title 15 U.S.C. §§ 78j(b), 78ff;
17 C.F.R. § 240.10b-5; and Title 18
U.S.C. § 2

Before, Brian A. Tsuchida, United States Magistrate Judge, Seattle, Washington.

The undersigned complainant, Special Agent Kathleen Moran, being duly sworn states:

**COUNTS ONE THROUGH THIRTY-FIVE
(Insider Trading)**

On or about the dates set forth below, in the Western District of Washington and elsewhere, defendants BRIAN JORGENSEN and SEAN STOKKE willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce 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

1 statements of material facts and omitting to state material facts necessary in order to
 2 make the statements made, in light of the circumstances under which they were made, not
 3 misleading; and (c) engaging in acts, practices and courses of business which operated
 4 and would operate as a fraud and deceit upon any person, to wit both defendants BRIAN
 5 JORGENSEN and SEAN STOKKE caused to be executed, and aided and abetted the
 6 execution, in brokerage accounts in the name of SEAN STOKKE the following securities
 7 transactions based on material, non-public information BRIAN JORGENSEN and SEAN
 8 STOKKE obtained by virtue of BRIAN JORGENSEN's employment at Microsoft
 9 Corporation in violation (a) the expectations of confidentiality of Microsoft Corporation;
 10 and (b) Microsoft Corporation's written policies regarding the use and safekeeping of
 11 confidential and material, non-public information:

Count	Approximate Date	Transaction
1	4/20/2012	Purchase of 10 BKS \$12 calls, expiring 05/18/2012
2	4/20/2012	Purchase of 15 BKS \$13 calls, expiring 05/18/2012
3	4/20/2012	Purchase of 15 BKS \$14 calls, expiring 05/18/2012
4	4/20/2012	Purchase of 10 BKS \$12 calls, expiring 07/20/2012
5	4/20/2012	Purchase of 13 BKS \$13 calls, expiring 07/20/2012
6	4/25/2012	Purchase of 15 BKS \$13 calls, expiring 06/15/2012
7	4/25/2012	Purchase of 20 BKS \$14 calls, expiring 06/15/2012
8	4/26/2012	Purchase of 20 BKS \$13 calls, expiring 05/18/2012
9	4/26/2012	Purchase of 20 BKS \$15 calls, expiring 05/18/2012
10	4/26/2012	Purchase of 30 BKS \$16 calls, expiring 05/18/2012
11	4/26/2012	Purchase of 1 BKS \$14 call, expiring 05/18/2012
12	4/27/2012	Purchase of 24 BKS \$14 calls, expiring 05/18/2012
13	4/27/2012	Purchase of 10 BKS \$15 calls, expiring 06/15/2012
14	7/12/2013	Purchase of 100 MSFT \$35 puts, expiring 07/19/2013
15	7/12/2013	Purchase of 100 MSFT \$35 puts, expiring 07/19/2013

1	16	7/12/2013	Purchase of 200 MSFT \$34 puts, expiring 07/19/2013
2	17	7/15/2013	Purchase of 100 MSFT \$35 puts, expiring 07/19/2013
3	18	7/15/2013	Purchase of 26 MSFT \$34.50 puts, expiring 07/19/2013
4	19	7/15/2013	Purchase of 74 MSFT \$34.50 puts, expiring 07/19/2013
5	20	7/15/2013	Purchase of 100 MSFT \$36 puts, expiring 07/19/2013
6	21	7/15/2013	Sale of 100 MSFT \$36 calls, expiring 07/19/2013
7	22	7/16/2013	Sale of 100 MSFT \$36 calls, expiring 07/19/2013
8	23	7/16/2013	Purchase of 100 MSFT \$36 puts, expiring 07/19/2013
9	24	7/17/2013	Purchase of 50 MSFT \$36 puts, expiring 07/19/2013
10	25	7/17/2013	Purchase of 28 MSFT \$35 puts, expiring 07/19/2013
11	26	7/17/2013	Purchase of 72 MSFT \$35 puts, expiring 07/19/2013
12	27	7/17/2013	Purchase of 100 MSFT \$36 puts, expiring 07/19/2013
13	28	7/18/2013	Purchase of 100 MSFT \$35 puts, expiring 07/19/2013
14	29	7/18/2013	Purchase of 100 MSFT \$35.50 puts, expiring 07/19/2013
15	30	10/24/2013	Purchase of 100 XLK \$33 calls, expiring 11/15/2013
16	31	10/24/2013	Purchase of 100 XLK \$34 calls, expiring 11/15/2013
17	32	10/24/2013	Purchase of 100 XLK \$32 calls, expiring 11/01/2013
18	33	10/24/2013	Purchase of 100 XLK \$33 calls, expiring 11/01/2013
19	34	10/24/2013	Purchase of 100 XLK \$32 calls, expiring 11/15/2013
20	35	10/24/2013	Purchase of 100 XLK \$32.50 calls, expiring 11/01/2013

22 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17,
23 Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code,
24 Section 2.

25 And the Complainant further states:
26
27
28

1 **I. QUALIFICATIONS OF AGENT**

2 1. I have been a Special Agent with the FBI for eight years. As a Special
3 Agent, I have conducted numerous investigations involving white collar crimes involving
4 the equity capital markets, including insider trading and market manipulation. As a
5 result, I am familiar with various schemes to defraud investors by using material non-
6 public information to personally enrich the white collar criminal. I am currently assigned
7 to the Seattle office of the FBI.

8 2. The facts set forth in this Complaint are based on information obtained by
9 me and others during this investigation from a variety of sources, including, but not
10 limited to: (a) evidence obtained as a result of search warrants; (b) information provided
11 to me by the United States Securities and Exchange Commission ("SEC"); (c) business
12 records and other documents obtained from various entities, including Microsoft
13 Corporation; (d) publicly available documents; and (e) voluntary interviews with the
14 defendants.

15 3. Because this Complaint is submitted for the limited purpose of establishing
16 probable cause in support of arrest warrants, it does not set forth each and every fact that
17 I or others have learned during the course of this investigation. I have set forth only the
18 facts that I believe are necessary to establish probable cause to believe that Brian
19 Jorgenson and Sean Stokke have committed the offense of Insider Trading, in violation of
20 Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal
21 Regulations, Section 240.10b-5.

22 **II. SUMMARY OF THE SCHEME**

23 4. Beginning in or about April 2012 and continuing through October 2013,
24 Brian Jorgenson and Sean Stokke engaged in a scheme to commit a series of illegal
25 insider trades in securities based on confidential information Brian Jorgenson obtained
26 from Microsoft Corporation. Jorgenson was employed as a Senior Manager in
27 Microsoft's Treasury Group. Sean Stokke was an avid "day trader" who regularly
28 speculated in stock and derivatives markets. Stokke was a friend of Jorgenson.

1 **B. Brian Jorgenson.**

2 8. Brian Jorgenson is a resident of Lynnwood, Washington. Jorgenson was
3 hired by Microsoft on January 10, 2011, in its Treasury Group as a Senior Manager of
4 Corporate Finance. Jorgenson's job responsibilities included managing Microsoft's
5 corporate cash and investments.

6 9. Jorgenson is a Chartered Financial Analyst (CFA). The CFA designation is
7 a professional credential program offered by the CFA Institute to investment and
8 financial professionals who successfully complete a set curriculum and meet other
9 professional requirements. Among other things, the CFA designation indicates that the
10 holder has demonstrated expertise in the field of investment management and financial
11 analysis of stocks, bonds, and derivatives. A CFA must also pledge to adhere to the CFA
12 Institute Code of Ethics and Standards of Professional conduct, which provides that
13 "Members... who possess material non-public information that could affect the value of
14 an investment must not act or cause others to act on the information." According to
15 Jorgenson's initial job application to Microsoft, he was previously employed at
16 Parametric Portfolios, an asset management company, as a portfolio manager from March
17 2008.

18 10. As a condition of employment with Microsoft, Jorgenson periodically
19 acknowledged receipt and acceptance of Microsoft's non-disclosure and insider trading
20 policies. Microsoft's non-disclosure policies prohibit, in relevant part, the disclosure to
21 anyone outside the company "(a) any confidential or proprietary information or trade
22 secrets of Microsoft or its subsidiaries or (b) any information received by Microsoft or its
23 subsidiaries from others that the recipient is obligated to treat as confidential or
24 proprietary."

25 11. Microsoft's insider trading policies further warn employees of legal
26 penalties and criminal sanctions that attend illegal insider trading on material, non-public
27 information. Microsoft advises employees that insider trading restrictions apply to both
28 Microsoft's own stock as well as the stock of third parties. The policy expressly states

1 that restrictions on buying, selling, or "tipping" -- i.e. passing on material, non-public
2 information to others -- can apply to securities of companies other than Microsoft "if you
3 have material non-public information . . . received by you as a result of a business
4 relationship or potential relationship between Microsoft and the other company.
5 Examples of such relationships may include joint development, license, supplier,
6 customer, or other similar relationships as well as a relationship with a public company
7 with which we are negotiating an investment or acquisition."

8 **C. Relationship Between Brian Jorgenson and Sean Stokke**

9 12. Sean Stokke is a resident of Seattle, Washington. Stokke was formerly
10 employed with Parametric Portfolios, the same asset management company that
11 employed Brian Jorgenson. Personal emails seized pursuant to a search warrant showed
12 that after Sean Stokke and Brian Jorgenson left Parametric Portfolios, the two maintained
13 a relationship and a shared interest in securities trading. Jorgenson and Stokke shared a
14 goal of one day having sufficient capital to operate their own investment fund business.

15 **IV. INVESTIGATION**

16 **A. Insider Trading Activity in Barnes & Noble.**

17 13. Barnes & Noble, Inc. is a content, commerce and technology company best
18 known for their retail business in books and periodicals. The company is headquartered
19 in New York, New York. Barnes & Noble's common stock is registered with the
20 Securities and Exchange Commission under Section 12(b) of the Exchange Act, 15
21 U.S.C. § 781, and is publicly listed on the NASDAQ Stock Market, a national exchange,
22 under the symbol "BKS."

23 14. According to information provided by Microsoft to the Financial Industry
24 Regulatory Authority ("FINRA"), on about November 9, 2011, high ranking executives
25 with Microsoft and Barnes & Noble began exploratory discussions on a potential
26 strategic partnership between Microsoft and Barnes & Noble. The discussions were
27 protected under a confidentiality agreement entered into by both corporations.
28

1 15. By about February 9, 2012, the two companies had arrived at an
2 understanding as to the general framework for a strategic partnership. Microsoft agreed
3 to invest hundreds of millions of dollars into a new entity within Barnes & Noble that
4 would house Barnes & Noble's digital and college business.

5 16. Between February 2012 and April 25, 2012, Microsoft and Barnes & Noble
6 continued to negotiate the details of the strategic partnership. On about April 27, 2012,
7 final agreements were signed between the two companies. Among the terms, Microsoft
8 committed to invest \$300 million in a new Barnes & Noble subsidiary that will bring
9 together the digital and college book business.

10 17. Prior to opening of the markets on the morning of Monday, April 30, 2012,
11 Microsoft and Barnes & Noble publicly announced the new strategic partnership.
12 Previously, on Friday April 27, 2012, Barnes & Noble stock closed at \$13.68 per share.
13 At opening on April 30, 2012, the market reacted very positively to the news of the joint
14 venture, and Barnes & Noble stock opened at \$25.79 per share to finally close on that day
15 at \$20.75.

16 **1. Brian Jorgenson was informed in advance of Microsoft's investment in**
17 **Barnes & Noble.**

18 18. During the course of this investigation, investigators reviewed internal
19 corporate emails and other electronic communications between Microsoft employees
20 conducted on the company's own computer networks. A review of some of these
21 corporate emails and electronic communications revealed the following:

22 19. On about April 6, 2012, J.C., Jorgenson's immediate supervisor, received a
23 series of documents regarding Barnes & Noble entitled "Project Newberry Materials."
24 "Project Newberry" was the code name for the strategic investment contemplated by
25 Microsoft in Barnes & Noble. The documents included an analysis by an investment
26 banking firm on the potential valuation of a company that would contain just Barnes &
27 Noble's digital business and college business. The analysis also included discussion of
28 the benefits of structuring this new entity as a partnership between Barnes & Noble and

1 an external partner. A separate document consisted of a power point presentation that
2 analyzed the impact to Microsoft's revenue if the corporation invested approximately
3 \$250 million in "NewCo" that contained Barnes & Noble's digital and college business.

4 20. The internal Microsoft communications further indicated that beginning on
5 or about April 6, 2012, J.C. shared with Brian Jorgenson the existence of the pending
6 investment. On April 6, 2012, the day that J.C. received the "Project Newberry"
7 materials, Jorgenson forwarded to J.C. a link to an article dated January 13, 2012, that
8 had been posted on an investment focused website "Streetinsider.com" entitled "Should
9 Microsoft Acquire Barnes & Noble?"

10 21. Internal Microsoft communications further showed that J.C., Jorgenson and
11 others in his working group met on the morning of April 18, 2012, to discuss "strategic
12 investments." On April 18, 2012, during or shortly after the time when it is believed J.C.,
13 Jorgenson and others were engaged in the strategic investment meeting, Jorgenson
14 utilized Microsoft's internal instant messaging system to inform J.C. that "bks earnings
15 isn't until June." I know that "bks" is the stock ticker symbol for Barnes & Noble.
16 Therefore, there is reason to believe that during that meeting, Jorgenson and others
17 discussed Microsoft's investment in Barnes & Noble digital and college business.

18 22. The fact that Jorgenson was aware of the Microsoft Barnes & Noble deal
19 prior to the public announcement was confirmed in a subsequent email Jorgenson sent to
20 J.C. on April 24, 2012. Jorgenson sent J.C. an agenda for a one-on-one meeting to take
21 place that day between the two men. Among the discussion items listed on the agenda
22 was "Strategic Investments - Newberry," referring to the code name for the pending
23 investment deal between Microsoft in Barnes & Noble's digital and college business.

24 **2. Brian Jorgenson and Sean Stokke purchase BKS call options ahead of**
25 **the announcement.**

26 23. Phone and text toll records for cellular telephones subscribed to by Sean
27 Stokke and Brian Jorgenson show that between March 1, 2012 to April 17, 2012, there
28 appeared to have been a total of only two text messages exchanged between Stokke and

1 Jorgenson. However, on April 18, 2012, the day Jorgenson had the meeting with J.C. and
2 others at Microsoft about the Barnes & Noble investment, Stokke and Jorgenson
3 exchanged 14 phone and text message contacts. On April 19, 2012, they exchanged 13
4 additional phone and text message contacts.

5 24. On April 19, 2012, Sean Stokke caused to be deposited \$4,000 from a
6 BECU bank account *6973, held in his name, into an Optionshouse online brokerage
7 account *5768, also held in his name. The Optionshouse brokerage account *5768 was
8 first opened in about April 19, 2011. However, until April 19, 2012, the Optionshouse
9 account had been dormant with no positions or cash since January 10, 2012. Moreover, a
10 review of the trading patterns for known securities accounts opened in the name of Sean
11 Stokke, including this Optionshouse account *5768, revealed a near single-minded focus
12 on the securities of pharmaceutical and biotechnology companies.

13 25. On April 20, 2012, Stokke began accumulating Barnes & Noble (“BKS”)
14 call options. On April 24, 2012, Sean Stokke caused to be deposited an additional \$5,000
15 from his BECU account *6973 into Optionshouse account *5768. The proceeds were
16 used again to purchase additional call options in BKS. As noted above, Stokke’s trading
17 history prior to April 2012 had focused entirely upon biotechnology and pharmaceutical
18 companies. Stokke’s sudden interest in BKS in April 2012 is anomalous and indicates he
19 was investing pursuant to Jorgenson’s information.

20 26. On April 30, 2012, Microsoft announced prior to the opening of the market
21 its investment in Barnes & Noble. Once the trading day began, Barnes & Noble stock
22 rose 49% from its previous close. Stokke then sold all its BKS call positions that day.

23 27. The following schedule details the purchase and sale of BKS positions in
24 Optionshouse account *5768:

Date Order Placed	Transaction	Approx. Net Amount
4/20/2012	Purchase of 10 BKS July 21 \$12.00 calls	(\$1,110.25)
4/20/2012	Purchase of 13 BKS July 21 \$13.00 calls	(\$1,115.77)
4/20/2012	Purchase of 10 BKS May 19 \$12.00 calls	(\$560.25)

1	4/20/2012	Purchase of 15 BKS May 19 \$13.00 calls	(\$386.12)
2	4/20/2012	Purchase of 15 BKS May 19 \$14.00 calls	(\$311.12)
3	4/24/2012	Sale of 10 BKS July 21 \$12.00 calls	\$2,389.67
4	4/24/2012	Sale of 13 BKS July 21 \$13.00 calls	\$2,589.14
5	4/25/2012	Purchase of 15 BKS June 16 \$13.00 calls	(\$2,261.12)
6	4/25/2012	Purchase of 20 BKS June 16 \$14.00 calls	(\$2,411.99)
7	4/26/2012	Purchase of 20 BKS May 19 \$13.00 calls	(\$2,011.99)
8	4/26/2012	Purchase of 1 BKS May 19 \$14.00 call	(\$68.67)
9	4/26/2012	Purchase of 20 BKS May 19 \$15.00 calls	(\$811.99)
10	4/26/2012	Purchase of 30 BKS May 19 \$16.00 calls	(\$763.74)
11	4/27/2012	Purchase of 10 BKS June 16 \$15.00 calls	(\$660.25)
12	4/27/2012	Purchase of 24 BKS May 19 \$14.00 calls	(\$1,572.69)
13	4/30/2012	Sale of all BKS call options	\$193,923.95
14		Approximate Net Proceeds	\$184,856.81

16 28. I know from my experience and information provided to me by others
17 familiar with derivatives trading, that a call option is an instrument that provides the
18 holder the right to purchase 100 shares of stock for each call, at a particular strike price,
19 up until the expiration date. For example, on April 20, 2012, the Optionshouse account at
20 issue purchased 10 BKS July 21 \$12.00 calls. That means that the account purchased an
21 option that gave the account holder the right to purchase 1000 common shares of Barnes
22 & Noble at the price of \$12.00 per share at any time up until July 21, 2012.

23 29. I know from experience and information provided to me that typically a
24 person purchases a call when he or she believes that the stock price will rise above the
25 strike price before the expiration date. That is because the call option will expire
26 worthless, and the premium paid to purchase the call will be lost in its entirety, if the
27 stock does not rise above the strike price. Taking the same example as above, that would
28 mean that if Barnes & Noble stock did not rise above \$12.00 by the expiration date of

1 July 21, 2012, Optionshouse account *5768 would lose entirely the \$1,110.25 premium
2 paid to obtain the option. On the other hand, if the underlying stock price of Barnes &
3 Noble were to rise and then even exceed the strike price, in this case \$12.00, before
4 expiry, then the call option is considered “in the money” and the value of the option
5 would be greatly increased from when the holder initially bought it. At this point, the
6 holder of the option has two choices to reap the profit: one, to sell the call option outright
7 in the derivatives market and receive a greater premium than he had initially paid; or two,
8 “exercise” the option by purchasing the underlying stock, in this case BKS, at the strike
9 price and then sell the stock at the higher market price.

10 30. Here, the Optionshouse brokerage account *5768 records indicate that
11 when the Microsoft/Barnes & Noble venture was made public on April 30, 2012, the
12 account simply sold back all of the call options in the derivative market thus profiting
13 from the trades.

14 31. Also notable about the pattern of the call options purchased in this case is
15 the short-dated nature of the calls purchased and retained. On April 20, 2012, two days
16 after it is believed Brian Jorgenson had a meeting with his supervisor and other
17 colleagues about Microsoft’s strategic investments, including the Barnes & Noble
18 investment, Stokke purchased 23 call options dated to expire in July and 40 options dated
19 to expire in May. Then on April 24, 2012, Stokke sold out of all the July dated calls and
20 thereafter, beginning April 25th, plowed all proceeds into purchasing even shorter-dated
21 calls. By April 27, 2012, the last market day prior to announcement, Optionshouse
22 account *5768 held 45 calls expiring in June and 135 calls expiring in May. This pattern
23 indicates that Stokke and Jorgenson expected that the increase in the price of Barnes &
24 Noble stock would likely happen before May 19, 2012. Significantly, April 24, 2012 is
25 the date in which Brian Jorgenson sent J.C. an email itemizing the agenda topics for their
26 meeting that day, including the topic of “Strategic Investments – Newberry.” Also on
27 April 24, 2012, Jorgenson called Stokke and they spoke for approximately twelve
28 minutes. As a result, I have reason to believe that Brian Jorgenson may have received

1 further detailed information about the timing of the announcement of the Microsoft deal
2 and had alerted Sean Stokke that the announcement would more than likely happen
3 before May 19, 2012.

4 **3. *Stokke opened a new brokerage account with proceeds of the BKS trades.***

5 32. On about May 4, 2012, Sean Stokke caused to be opened at Optionshouse a
6 new brokerage account *6319. In the account opening documents, Stokke designated
7 "biohawks 2" as the username for the account. The security question was "Favstock" and
8 the security answer was "Bks."

9 33. This new Optionshouse account *6319 was an account that was created to
10 be jointly controlled by both Sean Stokke and Brian Jorgenson. In May 2012, Sean
11 Stokke had obtained temporary employment with a third-party contracting vendor for
12 Microsoft which provided Stokke with a Microsoft corporate email account. On May 22,
13 2012, after he had opened the new Optionshouse account, Stokke, utilizing an instant
14 messaging system at Microsoft, wrote to Jorgenson, "so *we* are all set up for biohawks2."
15 (emphasis added).

16 34. The new Optionshouse account *6319 was furthermore funded with the
17 profits from the Barnes & Noble trade. On about May 25, 2012, \$5,000 was transferred
18 from Optionshouse account *5768 to Optionshouse account *6319. On about June 5,
19 2012, an additional \$36,000 was transferred from Optionshouse account *5768 to
20 Optionshouse account *6319. As detailed below, this second Optionshouse account
21 *6319 as well as the original Optionshouse account *5768 were used to conduct
22 additional illegal trades based on misappropriated, non-public information from
23 Microsoft.

24 **B. Insider Trading Activity Regarding Microsoft July 2013 Q4 Earnings.**

25 35. A little over a year after the Barnes & Noble trades, Brian Jorgenson and
26 Sean Stokke engaged in additional subsequent illegal insider trading activity, this time in
27 Microsoft securities. After the close of the markets on July 18, 2013, Microsoft publicly
28 released the financial results of operation for the fourth quarter for the company's fiscal

1 year 2013. Microsoft announced they had substantially missed prior consensus estimates
2 of earnings. The market was surprised and disappointed by the news. Prior to the
3 announcement, Microsoft stock's closing share price was \$35.44. After the
4 announcement, on July 19, 2013, Microsoft stock closed down at \$31.40 per share, a
5 plunge of 11% in one day.

6 36. Jorgenson, as part of his employment, was provided with Microsoft's
7 earnings results prior to public announcement. According to internal Microsoft corporate
8 emails, on about July 10, 2013, Jorgenson was informed by Microsoft personnel
9 responsible for preparing the financial statements that Microsoft's fourth quarter earnings
10 per share, on a diluted bases, was about \$0.60 per share.

11 37. Jorgenson knew immediately that this soon to be reported earnings number
12 was substantially below that of market expectation, and that Microsoft stock would likely
13 be materially impacted. On July 10th, after receiving the earnings number, Jorgenson
14 emailed an analysis he had performed to others at Microsoft discussing the potential
15 impact on Microsoft's stock price as a result of the "earnings miss." In that analysis,
16 Jorgenson noted that outside "analysts," on average, were expecting that Microsoft would
17 achieve fourth quarter earnings of approximately \$0.70 per share, a 10 cent difference
18 with what he had been informed earlier was the actual figure. Jorgenson further noted
19 that when other "peer" companies had announced an earnings miss of about -10%, the
20 stock of those companies moved down on average of 7%.

21 38. On July 12, 2013, Jorgenson received another update regarding Microsoft's
22 financial statements. In that update, the diluted earnings per share figure remained at
23 \$0.60 per share, materially below analysts' expectations.

24 39. On July 11, 2013, according to cellular telephone subscriber records
25 Jorgenson exchanged four calls and three text messages with Stokke. On July 12, 2013,
26 Jorgenson and Stokke exchanged two telephone calls.

27 40. A review of both Optionshouse brokerage accounts *5768 and *6319 held
28 in the name of Sean Stokke revealed that beginning on July 12, 2013 and continuing

1 through July 18, 2013, both accounts purchased a small number of July 2013 call options
2 and a large number of July 2013 put options in Microsoft. I know from my experience
3 and information learned from others that an investor purchases a put option in a stock if
4 he or she believes the stock's price is about to drop. In this case, between July 12, 2013
5 and July 18, 2013, the two Optionshouse account accumulated a total of 1250 put options
6 at a strike price between 34.00 and 36.00, for a total approximate cost of \$43,262. All of
7 the put options purchased were set to expire on July 19, 2013. What that meant is that if
8 the price of Microsoft stock did not drop below the strike price, i.e. in this case \$35.00 or
9 \$36.00, by July 19, 2013, the options would expire worthless and Stokke stood to lose all
10 the money he paid to purchase the options. However, if the price of Microsoft stock
11 dropped below the strike price set, then he stood to profit from these positions.

12 41. As noted above, Stokke, at the time he began accumulating Microsoft puts,
13 also purchased some Microsoft calls set at the same strike price as the puts. However, by
14 July 15 and 16th, Stokke had sold out of all of his Microsoft call positions. The sale of
15 the call options permitted Stokke and Jorgenson to avoid losses in those call positions,
16 knowing that the earnings news soon to be announced would be negative for Microsoft.
17 The sale of the call positions at that time indicated that Stokke and Jorgenson was assured
18 that the news for Microsoft will be so negative that the stock will be impacted materially
19 to the downside.

20 42. After-hours on July 18, 2013, post Microsoft's disappointing earnings
21 announcement, the price of Microsoft stock began to sink significantly. On July 19,
22 2013, Microsoft stock continued lower to close at \$31.40 per share. Beginning after-
23 hours on July 18th and continuing through July 19th, both of Stokke's Optionshouse
24 brokerage accounts liquidated all of the Microsoft put positions for substantial profit.
25 The following charts set forth the put and call option purchases and sales for each
26 Optionshouse account:

Optionshouse Account *5768

Date Order Placed	Transaction	Approx. Net Amount
7/12/2013	Purchase of 100 MSFT July 13 \$35.00 puts	(\$4,527.27)
7/12/2013	Purchase of 100 MSFT July 13 \$36.00 calls	(\$3,327.27)
7/15/2013	Purchase of 100 MSFT July 13 \$35.00 puts	(\$2,327.27)
7/15/2013	Sale of 100 MSFT July 13 \$36.00 calls	\$5,372.42
7/16/2013	Purchase of 100 MSFT July 13 \$36.00 puts	(\$5,127.27)
7/17/2013	Purchase of 50 MSFT July 13 \$36.00 puts	(\$2,217.89)
7/18/2013	Purchase of 100 MSFT July 13 \$35.00 puts	(\$3,027.27)
7/18/2013	Sale of 150 MSFT July 13 \$36.00 puts	\$12,412.82
7/19/2013	Sale of 300 MSFT July 13 \$35.00 puts	\$80,933.18
	Approximate Net Proceeds	\$78,164.18

Optionshouse Account *6319

Date Order Placed	Transaction	Approx. Net Amount
7/12/2013	Purchase of 100 MSFT July 13 \$35.00 puts	(\$4,527.27)
7/12/2013	Purchase of 100 MSFT July 13 \$36.00 calls	(\$3,327.27)
7/12/2013	Purchase of 200 MSFT July 13 \$34.00 puts	(\$2,846.04)
7/15/2013	Purchase of 26 MSFT July 13 \$34.50 puts	(\$403.38)
7/15/2013	Purchase of 74 MSFT July 13 \$34.50 puts	(\$1,132.39)
7/15/2013	Purchase of 100 MSFT July 13 \$36.00 puts	(\$6,327.27)
7/16/2013	Sale of 16 MSFT July 13 \$36.00 calls	\$980.45
7/16/2013	Sale of 84 MSFT July 13 \$36.00 calls	\$5,099.47
7/17/2013	Purchase of 28 MSFT July 13 \$35.00 puts	(\$629.75)
7/17/2013	Purchase of 72 MSFT July 13 \$35.00 puts	(\$1,462.01)
7/17/2013	Purchase of 100 MSFT July 13 \$36.00 puts	(\$4,227.27)
7/18/2013	Purchase of 100 MSFT July 13 \$35.50 puts	(\$4,527.27)

1	7/18/2013	Sale of 200 MSFT July 13 \$36.00 puts	\$16,553.27
2	7/18/2013	Sale of 75 MSFT July 13 \$35.50 puts	\$3,802.14
3	7/18/2013	Sale of 25 MSFT July 13 \$35.50 puts	\$1,236.73
4	7/19/2013	Sale of 100 MSFT July 13 \$35.00 puts	\$28,972.02
5	7/19/2013	Sale of 100 MSFT July 13 \$35.00 puts	\$27,472.05
6	7/19/2013	Sale of 200 MSFT July 13 \$34.00 puts	\$37,952.85
7	7/19/2013	Sale of 100 MSFT July 13 \$34.50 puts	\$24,472.10
8		Approximate Net Proceeds	\$117,131.16

10 43. Added together across the two Optionshouse accounts, the trades in
11 Microsoft put and call options resulted in an approximate net profit of more than
12 \$195,000 in just over seven days.

13 **C. Insider Trading Activity Regarding Microsoft Q1 October 2013 Earnings.**

14 44. After the markets closed on October 24, 2013, Microsoft publicly released
15 the financial results of operation for the first quarter for the company's fiscal year 2014.
16 Microsoft announced its earnings per share had risen 17% from a year ago, and the
17 market reacted positively. Prior to the announcement, Microsoft stock's closing share
18 price was \$33.47. After the announcement, on October 25, 2013, Microsoft stock closed
19 at \$35.46.

20 45. I have reason to believe that by October 24, 2013, Brian Jorgenson had
21 advanced knowledge from others at Microsoft that earnings in this first quarter were
22 better than market expectations, and that he shared that information with Sean Stokke for
23 the purpose of profiting from that information. A review of both Optionshouse brokerage
24 accounts *5768 and *6319 held in the name of Sean Stokke revealed that on October 24,
25 2013, prior to Microsoft's announcement, both accounts purchased a large number of call
26 options in XLK, an exchange-traded fund called the Technology Select Sector SPDR
27 Fund. The Fund's objective is to provide investment results that correspond to the
28 performance of The Technology Select Sector Index. One of the material components of

1 the XLK is Microsoft stock. At the time of Stokke's purchases, Microsoft stock
 2 comprised about 8% of XLK's holdings. On October 24, XLK closed at \$33.33. On
 3 October 25, 2013, after Microsoft's announcement of better-than-expected earnings,
 4 XLK closed at \$33.50. That same date, both Optionshouse brokerage accounts liquidated
 5 all of its positions in the XLK calls for a profit. The following charts set forth the call
 6 option purchases and sales for each Optionshouse account:

7
 8 Optionshouse Account *5768

9 Date Order Placed	Transaction	Approx. Net Amount
10 10/24/2013	Purchase of 100 XLK Nov 13 \$33.00 calls	(\$6,427.06)
11 10/24/2013	Purchase of 100 XLK Nov 13 \$34.00 calls	(\$1,327.06)
12 10/25/2013	Sale of 100 XLK Nov 13 \$33.00 calls	\$7,572.60
13 10/25/2013	Sale of 100 XLK Nov 13 \$34.00 calls	\$1,672.71
14	Approximate Net Proceeds	\$1,491.19

15
 16 Optionshouse Account *6319

17 Date Order Placed	Transaction	Approx. Net Amount
18 10/24/2013	Purchase of 100 XLK Oct Weekly \$32.00 calls	(\$13,027.06)
19 10/24/2013	Purchase of 100 XLK Oct Weekly \$33.00 calls	(\$3,327.06)
20 10/24/2013	Purchase of 100 XLK Nov 13 \$32 calls	(\$14,027.06)
21 10/24/2013	Purchase of 100 XLK Oct Weekly \$32.50 calls	(\$7,327.06)
22 10/25/2013	Sale of 100 XLK Oct Weekly \$32.00 calls	\$15,972.43
23 10/25/2013	Sale of 100 XLK Oct Weekly \$33.00 calls	\$5,872.63
24 10/25/2013	Sale of 100 XLK Nov 13 \$32 calls	\$16,372.45
25 10/25/2013	Sale of 100 XLK Oct Weekly \$32.50 calls	\$10,972.49
26	Approximate Net Proceeds	\$11,481.76


1 **D. Brian Jorgenson and Sean Stokke Admitted to Engaging in Illegal Insider**
2 **Trading Activity.**

3 46. On November 7, 2013, Brian Jorgenson and Sean Stokke were interviewed
4 separately by FBI agents about their illegal insider trading activity. Both men were
5 advised of their rights prior to the interviews, and both men voluntarily agreed to answer
6 questions. The interviews were recorded, also with the individuals' consents.


7 47. During his interview, Sean Stokke told investigators that he conducted
8 trades in Barnes & Noble, Microsoft, and the XLK exchange traded fund based on
9 advanced information gained by Jorgenson in the course of his employment at Microsoft.
10 Stokke explained that it was Jorgenson's idea to use Stokke's accounts to conduct these
11 illegal trades and that the proceeds from the trades were to be split evenly between the
12 two of them. Stokke stated that over the last year, he periodically delivered to Jorgenson
13 cash in approximately \$10,000 increments, packaged in envelopes. Stokke estimated that
14 he gave a total of \$40,000 to \$50,000 in cash to Jorgenson from the proceeds of their
15 trades. According to Stokke, the majority of the proceeds from their illegal trades were
16 to be used to help launch a biotech hedge fund business that the two wanted to build.

17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

1 48. Brian Jorgenson also confirmed to investigators that he provided
2 information about the Barnes & Noble investment in April 2012, the Microsoft missed
3 earnings in July 2013, and the better than expected earnings in October 2013 to Sean
4 Stokke for the purpose of engaging in securities trades ahead of the news. Jorgenson
5 acknowledged that he knew the information he shared with Stokke were "material and
6 non-public," and proprietary to Microsoft. Jorgenson confirmed that he received periodic
7 cash deliveries from Stokke out of the proceeds of the trades, and that the remaining
8 proceeds in the brokerage accounts were jointly owned.

9
10 
11 KATHLEEN MORAN, Special Agent,
12 Federal Bureau of Investigations

13 SUBSCRIBED and SWORN to before me this 17 day of December,
14 2013.

15
16 
17 BRIAN A. TSUCHIDA
18 United States Magistrate Judge