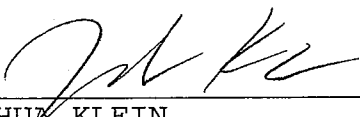


Approved:


JOSHUA KLEIN
JONATHAN STREETER
Assistant United States Attorneys

ANDREW MICHAELSON
Special Assistant United States Attorney

Before: THE HONORABLE DOUGLAS F. EATON
United States Magistrate Judge
Southern District of New York

09 MAG 2307
COMPLAINT

UNITED STATES OF AMERICA

-v.-

DANIELLE CHIESI,
MARK KURLAND, and
ROBERT MOFFAT,

Defendants.

Violations of
18 U.S.C. § 371;
15 U.S.C. §§ 78j(b),
78ff; 17 C.F.R. §§
240.10b-5 and
240.10b5-2

COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

DIANE M. WEHNER, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation and charges as follows:

COUNT ONE

(Conspiracy)

1. From at least in or about July 2008 up to and including in or about October 2008, in the Southern District of New York and elsewhere, DANIELLE CHIESI and MARK KURLAND, the defendants, 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, Sections 240.10b-5 and 240.10b5-2.

2. It was a part and object of the conspiracy that DANIELLE CHIESI and MARK KURLAND, the defendants, and others known

and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of 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.

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 August 15, 2008, MARK KURLAND, the defendant, called DANIELLE CHIESI, the defendant, in New York, New York.

b. On or about September 30, 2008, CHIESI caused the purchase of approximately 127,600 shares of Advanced Micro Devices ("AMD"), which traded on the New York Stock Exchange ("NYSE") under the symbol "AMD," in certain accounts affiliated with New Castle Partners ("New Castle").

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

COUNT TWO

(Conspiracy)

4. From at least in or about August 2008 up to and including in or about January 2009, in the Southern District of New York and elsewhere, DANIELLE CHIESI and ROBERT MOFFAT, the defendants, 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, Sections 240.10b-5 and 240.10b5-2.

5. It was a part and object of the conspiracy that DANIELLE CHIESI and ROBERT MOFFAT, the defendants, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of 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.

Overt Acts

6. 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 August 15, 2008, ROBERT MOFFAT, the defendant, called DANIELLE CHIESI, the defendant, in New York, New York.

b. On or about January 24, 2009, at approximately 12:37 p.m., a call was placed from ROBERT MOFFAT, the defendant, to DANIELLE CHIESI, the defendant. The call lasted approximately 15 minutes.

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

COUNT THREE

(Conspiracy)

7. From at least in or about July 2008 up to and including in or about October 2008, in the Southern District of New York and elsewhere, DANIELLE CHIESI, the defendant, and Raj Rajaratnam, 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, Sections 240.10b-5 and 240.10b5-2.

8. It was a part and object of the conspiracy that DANIELLE CHIESI, the defendant, and Raj Rajaratnam, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of 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.

Overt Acts

9. 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 July 24, 2008, DANIELLE CHIESI, the defendant, called Raj Rajaratnam, from New York, New York.

b. On or about August 15, 2008, Raj Rajaratnam called DANIELLE CHIESI, the defendant, in New York, New York.

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

COUNTS FOUR THROUGH SIX

(Securities Fraud)

10. On or about the dates set forth below, in the Southern District of New York and elsewhere, DANIELLE CHIESI, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, 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, CHIESI caused the securities transactions listed below to be executed in certain accounts affiliated with New Castle, based on material, nonpublic information.

COUNT	DATE	SECURITY	TRANSACTION
FOUR	July 25, 2008	Akamai (AKAM)	sold short 91,000 shares
FIVE	Aug. 15, 2008	AMD (AMD)	purchased 199,400 shares
SIX	Sept. 30, 2008	AMD (AMD)	purchased 127,600 shares

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5
and 240.10b5-2, and Title 18, United States Code, Section 2.)

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

11. I have been a Special Agent with the Federal Bureau of Investigation for approximately three and one-half 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 numerous individuals for participating in such offenses.

12. The information contained in this affidavit 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) information provided by the United States Securities and Exchange Commission (the "SEC"); (b) publicly available documents; (c) phone records obtained from certain telecommunications companies; and (d) 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

13. Based on information obtained from the Financial Industry Regulatory Authority ("FINRA") and on information available to the public over the Internet, I am aware of the following:

a. At certain times relevant to this Complaint, DANIELLE CHIESI, the defendant, worked for New Castle. In or about 2008, New Castle was the equity hedge fund group of Bear Stearns Asset Management Inc. ("BSAM"), and has had assets under management of approximately \$1 billion.

b. At certain times relevant to this Complaint, MARK KURLAND, the defendant, served as a Senior Managing Director of BSAM, and is currently one of the top executives at New Castle.

c. At all times relevant to this Complaint, ROBERT MOFFAT, the defendant, was employed by International Business Machines Corp. ("IBM"), a public company whose stock traded on the NYSE under the symbol "IBM." In or about July 2008, MOFFAT was named Senior Vice President and Group Executive in IBM's Systems and Technology Group.

Insider Trading Scheme

General Overview

14. As set forth in more detail below, there is probable cause to believe that DANIELLE CHIESI and MARK KURLAND, the defendants, conspired to engage in insider trading in accounts affiliated with their hedge fund, New Castle. The means by which CHIESI and KURLAND conspired to effectuate the fraudulent scheme were as follows: CHIESI obtained material, nonpublic information (the "Inside Information") from certain individuals, including (i) an individual employed by Akamai, Inc. (the "Akamai Executive"), who provided CHIESI with Inside Information regarding Akamai; and (ii) ROBERT MOFFAT, the defendant, who provided CHIESI with Inside Information regarding AMD, IBM, and Sun Microsystems ("Sun"). This Inside Information had been disclosed in violation of duties of trust and confidence. CHIESI shared certain of this Inside Information with KURLAND, and CHIESI and/or KURLAND caused the execution of securities transactions on the basis of certain of this Inside Information in certain accounts affiliated with New

Castle.

15. There is probable cause to believe that DANIELLE CHIESI and ROBERT MOFFAT, the defendants, conspired to engage in insider trading. The means by which CHIESI and MOFFAT conspired to effectuate the fraudulent scheme were as follows: MOFFAT provided Inside Information regarding AMD and other companies to CHIESI. MOFFAT provided the Inside Information to CHIESI in violation of duties of trust and confidence. CHIESI then caused the execution of securities transactions on the basis of certain of the Inside Information provided by MOFFAT in certain accounts affiliated with New Castle.

16. There is probable cause to believe that DANIELLE CHIESI, the defendant, and Raj Rajaratnam, conspired to engage in insider trading. The means by which CHIESI and Rajaratnam conspired to effectuate the fraudulent scheme were as follows: CHIESI obtained Inside Information regarding Akamai and AMD from the Akamai Executive and ROBERT MOFFAT, the defendant, respectively. CHIESI shared this and other Inside Information with Rajaratnam, who, in turn, provided CHIESI with Inside Information regarding AMD and other publicly traded companies. The Inside Information that CHIESI provided to Rajaratnam, as well as the Inside Information that Rajaratnam provided to CHIESI, had been disclosed in violation of duties of trust and confidence. CHIESI and Rajaratnam then caused the execution of securities transactions based on certain of the material, nonpublic information that had been shared.

17. Finally, there is probable cause to believe that DANIELLE CHIESI, the defendant, engaged in insider trading in certain accounts affiliated with New Castle. CHIESI obtained Inside Information regarding Akamai from the Akamai Executive, and regarding AMD from ROBERT MOFFAT, the defendant, Rajaratnam and an executive of AMD (the "AMD Executive"). This Inside Information was disclosed in violation of duties of trust and confidence. CHIESI then caused certain accounts affiliated with New Castle to execute securities transactions on the basis of this Inside Information, earning a profit of more than \$2.4 million.

Interception of Wire Communications

18. In connection with the investigation, approval was obtained on or about March 7, 2008, and on certain dates thereafter, to conduct court-authorized interception of wire communications over a cell phone used by Rajaratnam (the "Rajaratnam Cell Phone"). As discussed further below, a number of the calls intercepted over the wiretap consist of Rajaratnam

either providing, receiving, or seeking material nonpublic information about various publicly traded companies.¹

19. Also in connection with the investigation, approval was obtained on or about August 13, 2008, and then again on September 12, 2008, to conduct court-authorized interception of wire communications over (i) a landline used by DANIELLE CHIESI, the defendant ("Chiesi Landline A"); (ii) a second landline used by DANIELLE CHIESI, the defendant ("Chiesi Landline B"); and (iii) a cell phone used by DANIELLE CHIESI, the defendant (the "Chiesi Cell Phone," and, collectively, the "Chiesi Phones"). As discussed further below, a number of the calls intercepted over the wiretaps consist of CHIESI either providing, receiving, or seeking material nonpublic information about various publicly traded companies.

20. Also in connection with the investigation, approval was obtained on or about October 14, 2008, and then again on December 5, 2008, and on January 6, 2009, to conduct court-authorized interception of wire communications over a cell phone (the "CW-1 Cell Phone"), which was used by an individual who subsequently began to cooperate with the government's investigation ("CW-1"). As discussed further below, a number of the calls intercepted over the wiretaps consist of CW-1 either providing, receiving, or seeking material, nonpublic information about various publicly traded companies before s/he became a cooperating witness.

Insider Trading in the Securities of Akamai

21. Based on my review of phone records and public records available over the Internet, I believe that during all times relevant to this Complaint, the Akamai Executive was employed by Akamai.

22. Based on my review of public records available over the Internet, I believe that Akamai's Code of Business Conduct and Ethics, which applies to all Akamai employees, provides: "It is a conflict of interest, and illegal, if investment activity that benefits you (or a relative or other person with whom you have a personal relationship), actually is, or appears to be, influenced by material, non-public information that you possess by virtue of

¹ 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.

your position with Akamai." The code defines "material non-public information" as information "that is not publicly available that could affect the price of our securities." It notes that such information includes, but is not limited to, "financial results, earnings, estimates... or other significant business developments at Akamai." The code further provides: "[Y]ou may not give material, non-public information, or tips based on such information, to family members, friends, or anyone outside the Company."

23. Based on my review of public records, news reports, phone records provided by certain telecommunications companies, account records provided by New Castle's prime broker, and intercepted wire communications occurring over the Rajaratnam Cell Phone, I have learned the following:

a. On or about July 24, 2008, at approximately 4:00 p.m., shares of Akamai, which trade on the NASDAQ under the symbol "AKAM," closed at a price of \$32.18 per share.

b. On or about July 24, 2008, at approximately 8:52 p.m., DANIELLE CHIESI, the defendant, received a call on the Chiesi Cell Phone from a telephone number subscribed to the Akamai Executive. The call lasted approximately 15 minutes.

c. Immediately after this call ended, at approximately 9:07 p.m., CHIESI used Chiesi Landline A to call a telephone number used by MARK KURLAND, the defendant. The call lasted approximately six minutes.

d. Shortly thereafter, at approximately 9:18 p.m., CHIESI used Chiesi Landline B to call Rajaratnam on the Rajaratnam Cell Phone. During the intercepted call, to which I have listened, CHIESI said, "Akamai.... I'm trading it tomorrow.... They're gonna guide down. I just got a call from my guy.... I was talking about the family and everything, and then he said people think it's gonna go to 25 [dollars per share]. They print on Wednesday." CHIESI told Rajaratnam that she would explain later how she "got this guy to trust me again." CHIESI said that she was talking to him "about the family" and how "you're the only person in the family that helps me." He then said, "... by the way, we're gonna guide down on Wednesday.... We're gonna guide down a lot. People internally are saying it's gonna go to 25 [dollars per share], our stock...." Rajaratnam said that he would be "radio silent." Rajaratnam asked when Akamai would report, and CHIESI replied, "Wednesday." Rajaratnam said that "you got a few more days. Friday, Monday...." CHIESI said, "Just keep shorting every day. We got a lot of days...."

e. On the following day - Friday, July 25, 2008 - CHIESI caused certain accounts affiliated with New Castle to sell short 91,000 shares of Akamai at a price of \$31.70 per share.

f. On or about Monday, July 28, 2008, CHIESI caused certain accounts affiliated with New Castle to sell short 26,900 shares of Akamai at a price of \$31.30 per share.

g. On or about Tuesday, July 29, 2008, CHIESI caused certain accounts affiliated with New Castle to sell short 77,100 shares of Akamai at a price of \$31.52 per share.

h. On or about Wednesday, July 30, 2008, CHIESI caused certain accounts affiliated with New Castle to sell short 119,800 shares of Akamai at prices ranging from \$31.00 to \$30.03 per share, and to buy 1,466 August \$30 put options at a price of approximately \$1.58 per share per contract.²

i. On or about Wednesday, July 30, 2008, at approximately 9:28 a.m., Rajaratnam used the Rajaratnam Cell Phone to call CHIESI on the Chiesi Cell Phone. CHIESI said that they had done a great job maintaining the confidentiality of the information regarding Akamai. Referring to the Akamai Executive, CHIESI told Rajaratnam that she was going to call "him" again to "see how much clarity I can get."

j. On or about Wednesday, July 30, 2008, at approximately 12:58 p.m., Rajaratnam used the Rajaratnam Cell Phone to call CHIESI on the Chiesi Cell Phone. CHIESI said that she had made a "calculated decision" to not call her source again. She told Rajaratnam that she was "afraid" that if the stock price were to fall after the upcoming earnings announcement, her source would be "afraid," and "if he loses his job, I'll get blamed for it."

k. On or about Wednesday, July 30, 2008, at approximately 4:01 p.m., Akamai announced its quarterly earnings for the quarter ending on June 30, 2008. During an earnings call shortly thereafter, Akamai provided its guidance for the following quarter. Specifically, Akamai announced that it expected earnings

² A "put option" gives the purchaser the right to sell a certain number of shares (typically 100 shares) of an underlying security at a specified price, until the specified expiration date of the put option (typically the third Friday of a specified month).

per share for the following quarter to be 39 to 40 cents, below analysts' expectation of 42 cents. On the following day, shares of Akamai opened trading at \$25.06 per share, down approximately 20 percent (approximately \$6.19 per share) from the previous day's close.

l. On or about Wednesday, July 30, 2008, at approximately 5:30 p.m., Rajaratnam used the Rajaratnam Cell Phone to call CHIESI on Chiesi Landline A. Rajaratnam thanked CHIESI for the information she had provided.

m. On or about July 31, 2008, New Castle covered the short positions in Akamai stock described above at a price of \$25.09 per share, and sold the put options in Akamai described above at a price \$5.12 per share per contract, for a profit of more than \$2.4 million.

24. Based on my review of certain wire communications intercepted over the Chiesi Phones, I believe that CHIESI and KURLAND conspired to obtain Inside Information from the Akamai Executive on a number of occasions. These intercepted calls include, among others, the following:

a. On or about August 15, 2008, at approximately 11:50 a.m., KURLAND called CHIESI on Chiesi Landline A. KURLAND and CHIESI discussed the price of Akamai stock. KURLAND asked whether "that guy" had called CHIESI back, and CHIESI replied, "[the Akamai Executive] has not called me back." Referring to the Akamai Executive, KURLAND said that "it would be good if you could talk to this guy, but if he won't talk to you there's nothing we can do about it."

b. On or about August 25, 2008, at approximately 11:06 a.m., ROBERT MOFFAT, the defendant, called CHIESI on Chiesi Landline A. CHIESI told MOFFAT that Akamai's business "blows," and that the Akamai Executive had told her that Akamai's Chief Financial Officer ("CFO") "didn't take the numbers down enough." Based on my training and experience, I believe that "tak[ing] the numbers down" refers to when a company lowers its guidance regarding future revenue and/or earnings. MOFFAT asked CHIESI whether she had "calibrated [the Akamai Executive] saying 'business sucks' against what the expectations [the Akamai CFO] set were?" CHIESI said, "This is what [the Akamai Executive] said to me: 'DANI, [the Akamai CFO] did not take numbers down enough for the street, and he just killed our stock.... We can't even make the numbers that, ahh, he guided to.'"

c. On or about September 2, 2008, at approximately

1:29 p.m., CHIESI used Chiesi Landline B to call KURLAND. CHIESI told KURLAND that Akamai was going to be speaking at a conference the following day. She said, "I wonder if Akamai pre-announces...." Based on my experience, I believe that a "pre-announce[ment]" refers to when a company announces information regarding quarterly earnings before the date on which it would announce its earnings in the ordinary course, and that pre-announcements generally take place when business is either significantly better or worse than analysts' expectations. CHIESI and KURLAND discussed whether to sell short more shares of Akamai stock. CHIESI asked, "Do you want me to call [the Akamai Executive] up? It's a pretty fucking scary thing to do." KURLAND replied, "Call him.... Let him talk."

d. On or about September 9, 2008, at approximately 12:58 p.m., CHIESI received a call on the Chiesi Cell Phone from the Akamai Executive. CHIESI and the Akamai Executive discussed Akamai's business and whether Akamai would buy back stock. The Akamai Executive replied that the "big decisions" that Akamai needed to make were whether to buy back stock or acquire a certain technology company. He told CHIESI that business had not gotten any better, and that "things are... tough right now." CHIESI asked whether the Akamai CFO's "biggest mistake was not taking [guidance] down as much as he should have." The Akamai Executive replied, "Yeah, I would agree with that." Later in the call, CHIESI provided the Akamai Executive with a stock tip that, as is further discussed below, I believe to be based on material, nonpublic information. Specifically, CHIESI said, "I want you to buy AMD... before the end of the month." CHIESI said that "nothing's gonna happen next week, but that the week after... I think I've got a big deal...." The Akamai Executive replied, "Okay, okay. Good. I really appreciate that...." CHIESI said, "I'll tell you this: If I didn't know IBM and speak to AMD, I wouldn't be fucking buying this stock either...." As is further discussed below, CHIESI had obtained Inside Information regarding AMD from ROBERT MOFFAT, the defendant, Rajaratnam, and the AMD Executive.

e. On or about October 10, 2008, at approximately 10:50 p.m., CHIESI received a call on Chiesi Landline A from the Akamai Executive. The Akamai Executive said that he was "gonna come visit you in New York and I'm gonna give you a present. But it has to be face to face...." Later, he said, "DANIELLE, I have a major present for you." CHIESI asked what he was talking about, and the Akamai Executive replied, "Information." CHIESI said, "Well that, that is a great present."

Insider Trading in the Securities of AMD

25. Based on my review of information publicly available over the Internet, I believe that during all times relevant to this Complaint, ROBERT MOFFAT, the defendant, was employed by IBM as a Senior Vice President.

26. Based on my review of information publicly available over the Internet, I believe that IBM's Business Conduct Guidelines, which apply to all IBM employees, provide: "In the course of your employment with IBM, you may become aware of information about IBM or other companies that has not been made public. The use of such nonpublic or 'inside' information about IBM or another company for your financial or other benefit not only is unethical, but also may be a violation of law." The guidelines further provide that "material inside information is information which is not available to the general public and which could influence a reasonable investor to buy, sell or hold stock or securities."

27. Based on my review of intercepted wire communications occurring over the Chiesi Phones, I believe DANIELLE CHIESI, the defendant, and ROBERT MOFFAT, the defendant, are friends.

28. Based on my review of public records, news reports, documents provided by AMD, telephone records provided by certain telecommunications providers, account records provided by New Castle's prime broker, and intercepted wire communications occurring over the Rajaratnam Cell Phone and the Chiesi Phones, I have learned the following:

a. In or about June 2008, AMD entered into exclusive negotiations with investors based in Abu Dhabi over a deal pursuant to which AMD would keep its design business but spin off its manufacturing business, referred to as the "fab" business, into a separate entity (the "AMD Reorganization"). IBM participated in the AMD Reorganization because the new, separate entity containing AMD's fab needed to obtain a license from IBM to use certain IBM technology.

b. On or about June 6, 2008, at approximately 7:21 p.m., CHIESI called Rajaratnam on the Rajaratnam Cell Phone. CHIESI told Rajaratnam that she had spoken with the AMD Executive. Referring to the AMD Reorganization, CHIESI said that the "deal" was "not close."

c. On or about June 6, 2008, at approximately 7:26 p.m., Rajaratnam used the Rajaratnam Cell Phone to call CHIESI.

CHIESI and Rajaratnam continued their discussion of AMD. Rajaratnam advised CHIESI to sell short AMD stock, and then to "go long it before the deal."

d. On or about August 15, 2008, at approximately 11:20 a.m., Rajaratnam called CHIESI on Chiesi Landline A. Rajaratnam asked CHIESI whether she had spoken with the AMD Executive. CHIESI indicated that the AMD Executive was "gonna be here on Monday" to meet with IBM. CHIESI said that she had heard from "IBM" that the transaction involving AMD "will get done on [September] 9th," but that the AMD Executive had told her "mid-September or something like that." Rajaratnam informed CHIESI that "yesterday they had a shake hands." Rajaratnam and CHIESI then discussed buying shares of AMD. Rajaratnam asked whether the AMD Executive would give CHIESI "the full low down," and CHIESI replied, "Oh yeah. Plus IBM will, too." CHIESI told Rajaratnam that she would see ROBERT MOFFAT, the defendant, on Sunday. Rajaratnam said to CHIESI that the "Arabs" would invest "six to eight billion" dollars in the fab. CHIESI said that IBM will provide AMD with its technology. At the end of the call, CHIESI told Rajaratnam that she would call MOFFAT to "see what he knows."

e. Shortly after speaking with Rajaratnam, on or about August 15, 2008, CHIESI spoke with KURLAND using Chiesi Landline A. She told KURLAND, "I'm working hard on this AMD thing." She said that she would be meeting with MOFFAT "on fucking Sunday at my mom's house. I'm meeting with [the AMD Executive] on Monday, because [the AMD Executive] is meeting with MOFFAT, with IBM. They want IBM's technology." CHIESI then explained that IBM needed to "bless" the AMD Reorganization because "IBM sells their technology to AMD." CHIESI and KURLAND discussed whether the stock price of AMD would rise on the announcement. CHIESI said, "I'm gonna meet with... IBM on Sunday, kind of get the lay of the land. Then I'm gonna meet with [the AMD Executive] after he speaks with IBM.... Then I'll be able to triangulate with IBM...." She added that "IBM" had told her that the deal would be announced by September 9. KURLAND said, "Don't put anything on email.... Don't email even Raj [Rajaratnam], or anybody.... Be careful." At the end of the call, KURLAND asked whether CHIESI wanted to buy AMD stock. CHIESI said that she did. KURLAND said, "Ok. Buy 300 [thousand shares] across the board...."

f. On or about August 15, 2008, CHIESI caused certain accounts affiliated with New Castle to purchase approximately 199,400 shares of AMD stock at a price of approximately \$5.44 per share.

g. On or about August 15, 2008, at approximately 11:50 a.m., KURLAND called CHIESI on Chiesi Landline A. After a discussion of Akamai, CHIESI said, "I like buying the AMD now." KURLAND cautioned that the AMD Executive had "been preaching this deal for so long," referring to the fact that the AMD Reorganization had been rumored for some time. CHIESI said, "But right now I've got confirmation... I spoke to [the AMD Executive].... IBM. They'll be coming all the way over here to meet with the Arabs and [the AMD Executive] on Monday...." CHIESI added, "IBM thinks it's going down. He said, 'but it's paperwork.' He said, 'I'll tell you the structure.'" KURLAND said that paperwork could take a long time, and CHIESI replied, "Ok, well, MOFFAT said to me [it] looks like 9th of September...."

h. On or about August 15, 2008, at approximately 12:38 p.m., Rajaratnam called CHIESI on Chiesi Landline A. Rajaratnam asked whether it was CHIESI who was buying AMD stock. CHIESI said that she was not and that she "didn't tell shit to anybody." CHIESI said that she had left a message for MOFFAT. Later in the call, Rajaratnam said that he wanted to buy 10 million shares, and CHIESI said that she wanted to buy "a lot," too. CHIESI said, "I don't want anybody else to make money on this but us, 'cuz I don't want to get in trouble for a lot of reasons...."

i. On or about August 15, 2008, at approximately 1:56 p.m., MOFFAT called CHIESI on Chiesi Landline A. CHIESI said that she was excited to see MOFFAT on Sunday. After several minutes of conversation, CHIESI brought up the AMD Reorganization and asked MOFFAT a number of questions. MOFFAT explained that AMD needed IBM to provide a license to enable the "FoundryCo" (referring to the fab) to use certain IBM technology. MOFFAT said that "we're in the process of trying to sign it within the next day or so, to give them that capability." MOFFAT also said that "Doug Grose" would be the CEO of the FoundryCo, which would be "a joint venture owned 50/50 by AMD and Abu Dhabi, their government entity." MOFFAT continued: "Each guy will have one, what's known as a golden share, meaning they have equal voting-type-of-thing. Umm, the, let me just read the next point on the chart here. AMD's economic ownership expected to be diluted with additional capital investment by government entity to no less than 30 percent...." After MOFFAT provided further information, CHIESI said, referring to the chart, "I need to look at this.... I do need to look at it.... I got to get a better handle on what I think." She asked MOFFAT to explain the deal in "laymen's terms." MOFFAT said, "Upfront, they'll only give them a billion dollars worth of cash and another seven to eight hundred million dollars worth of debt which they'll assume. Upfront, they only give them

like two billion dollars." After further discussion of certain details regarding the transaction, CHIESI asked MOFFAT whether he could bring the chart to her. MOFFAT replied, "Yeah, I think so. I mean, I got to figure out whether or not stuff we have is right. It's down low, right, and I talk to [the AMD Executive] tonight at 5:00."

j. On or about August 19, 2008, at approximately 2:52 p.m., CHIESI called Rajaratnam on the Rajaratnam Cell Phone. CHIESI indicated that she had spoken with the AMD Executive, who told her that "Wall Street will be shocked," and that AMD will "definitely make the announcement... before they print [quarterly earnings], but it'll be end of September, probably." Later Rajaratnam said, "Between my guy and your guy we can nail this." CHIESI and Rajaratnam discussed the importance of keeping the information confidential. CHIESI said that "if it leaks, I think I'm out of business.... Because... who knows IBM? And who, who's in bed with AMD? Put Danielle's name on the fuckin' ticket."

k. On or about August 22, 2008, at approximately 10:54 a.m., KURLAND called CHIESI on Chiesi Landline A. CHIESI shared with KURLAND certain information that she had obtained from the AMD Executive. At the end of the call, CHIESI said that she was going to "get a new cell phone and talk to [the AMD Executive] from there.... I know I'm paranoid." KURLAND replied, "Alright, well don't keep talking about it on the phone. I'll take care of it alright."

l. On or about August 22, 2008, at approximately 12:38 p.m., MOFFAT called CHIESI on Chiesi Landline A. Toward the end of the call, CHIESI asked about the timing of the deal involving AMD, and MOFFAT replied, "six to eight weeks from my meeting." When asked the chances that the deal would fall through, MOFFAT replied, "Zero..., I see no way that it doesn't get done." MOFFAT also said that IBM "already signed" the agreement.

m. On or about August 22, 2008, between approximately 1:05 p.m. and 4:13 p.m., CHIESI spoke with KURLAND on the phone several times. KURLAND pressed CHIESI for further information regarding the terms of the AMD Reorganization. CHIESI said that MOFFAT was trying to figure out how the numbers make sense, and that MOFFAT would be calling her back. CHIESI said she was going to have KURLAND "hooked in" to her call with MOFFAT. KURLAND said, "I don't want him knowing." KURLAND ultimately agreed to be "hook[ed] in," and said that CHIESI should use his cell phone.

n. On or about August 22, 2008, at approximately 4:30 p.m., MOFFAT called CHIESI on Chiesi Landline A. Approximately ten minutes into the call, CHIESI used Chiesi Landline B to call KURLAND on his cell phone, and then placed both calls on speakerphone such that KURLAND was able to overhear her conversation with MOFFAT. During the portion of the call overheard by KURLAND, MOFFAT began to explain certain terms of the deal, but then ended the call saying that he needed to "figure this out." At approximately 4:54 p.m., MOFFAT called CHIESI back on Chiesi Landline A, and approximately one minute later CHIESI allowed KURLAND to overhear the conversation by repeating the process described above. During the portion of the call overheard by KURLAND, CHIESI asked MOFFAT to "start from scratch." MOFFAT then explained that AMD was going to separate into two companies, a "FabCo" and a "DesignCo." He said, "The Arabs are gonna pay them 2.1 billion dollars... for a 50 percent stake in Fabco." MOFFAT also said that the investors would "buy some stock of AMD, but that's a whole different transaction." MOFFAT said that they would buy \$300 million of stock, and that even though that purchase could be viewed as dilutive, "I don't see any way, shape or form this thing's dilutive."³

o. On or about August 22, 2008, at approximately 5:08 p.m., CHIESI used Chiesi Landline A to call KURLAND. CHIESI asked whether he had listened, and he replied, "Yeah." CHIESI and KURLAND then discussed how to value AMD stock based on the material, nonpublic information obtained from MOFFAT. KURLAND instructed CHIESI to ask the AMD Executive how the debt was going to be allocated between AMD and the fab. Towards the end of the call, KURLAND told CHIESI that she should work on getting more information, and that he would focus on the numbers: "This is what I think you should do more of, what you're doing more of now.... You know, get more relationships, like Microchip, Akamai.... Why don't you just worry about getting the information, and don't worry about the numbers...."

p. On or about August 26, 2008, at approximately 10:13 a.m., KURLAND called CHIESI on Chiesi Landline A. KURLAND and CHIESI discussed the AMD Reorganization and, specifically, the information that KURLAND had overheard MOFFAT providing to CHIESI

³ Based on public news reports regarding the AMD Reorganization announced on October 7, 2008, I believe that AMD did not ultimately receive \$2.1 billion in exchange for 50 percent of the fab. Rather, in exchange for the fab, AMD received approximately \$700 million in cash, and transferred approximately \$1.2 billion in debt to the fab.

over Chiesi Landline A. KURLAND concluded that "the reason [AMD is] not diluting themselves and the reason it's very attractive is because they're getting rid of the fabs and they're getting two billion for something that people thought...." CHIESI completed the thought by saying, "was... taking them down anyway." KURLAND said, "I think if you can get one thing out of [the AMD Executive], more important than the debt distribution, alright, it would be: 'Assuming you're fabless... and you have a scheme to do that, are you gonna make an announcement subject to government approval or [are] you gonna wait for the fucking government to approve it....'" CHIESI said that she would "get an answer to that."

q. On or about August 26, 2008, at approximately 10:47 a.m., Rajaratnam called CHIESI on Chiesi Landline B. Rajaratnam said that he wanted to call CHIESI "on a secure phone." CHIESI and Rajaratnam then discussed the AMD Reorganization. Rajaratnam said that he had heard that the investors will pay \$1.2 billion to increase their ownership in AMD to 20 percent, and then they will invest six to eight billion dollars in the "fab," which will be owned "50/50" by AMD and the investors. Rajaratnam also told CHIESI that AMD is anticipating quarterly revenue for the current quarter to be "1560" (which I believe means \$1.56 billion), whereas analysts were expecting revenue of only "1480" (\$1.48 billion). CHIESI later asked, "If the two of us weren't close to the company as we are, would you be long the stock?" Rajaratnam replied, "Yeah, no. I wouldn't." CHIESI said that she "wouldn't of touch[ed] it with a fucking 10-foot pole."

r. On or about August 26, 2008, at approximately 6:06 p.m., the AMD Executive called CHIESI on Chiesi Landline A. As requested by KURLAND (see paragraph 28(p) above), CHIESI asked the AMD Executive whether AMD would announce the reorganization prior to obtaining government approval. The AMD Executive said "that's not a simple question," since there are two steps to obtaining government approval. The AMD Executive further said that the announcement can be made on the first step, but the deal cannot close until the second step. Then, as she had also been instructed to do by KURLAND (see paragraph 28(o) above), CHIESI asked questions regarding how AMD's debt would be allocated. The AMD Executive replied, "It's gonna be very, very complicated, but... it will leave AMD proper with very little debt.... a lot of the debt that AMD has will be transferred to the new company." Later, CHIESI asked if AMD could be left with less than \$3 billion in debt, to which the AMD Executive replied, "Yes." CHIESI said, "Alright... we still think it will be [announced in] September?" The AMD Executive replied, "Yes."

s. On or about August 27, 2008, at approximately 9:08 a.m., CHIESI used Chiesi Landline B to call Rajaratnam. CHIESI said that she had spoken with the AMD Executive, who told her that AMD could be left with less than \$3 billion in debt.

t. On or about August 27, 2008, CHIESI used Chiesi Landline B to call a co-conspirator not named as a defendant herein (the "CC"). CHIESI said, "You just gotta trust me on this. Here's how scared I am about what I'm gonna tell you on AMD." CHIESI provided the CC with certain information regarding the AMD Reorganization. The CC asked when the announcement would take place, and CHIESI replied, "September." CHIESI said, "I swear to you in front of God.... You put me in jail if you talk." Later, CHIESI said, "I'm dead if this leaks. I really am.... and my career is over. I'll be like Martha fucking Stewart." After further discussion, the CC told CHIESI that s/he would buy shares of AMD.

u. On or about August 27, 2008, at approximately 1:11 p.m., Rajaratnam called CHIESI on Chiesi Landline B. CHIESI said that she "could get fucked if [AMD stock] is up 30 percent." Based on my experience, I believe that CHIESI meant that she was afraid that if AMD were up 30 percent, she would make so much money that her trading might attract the attention of regulators. CHIESI asked Rajaratnam if she should be "showing a pattern of trading" AMD stock. Rajaratnam said, "I think you should buy and sell, and buy and sell." He also emphasized the importance of remaining quiet: "On Akamai or IBM, anything, be radio silent. Like, you know, I get shit on lots of companies...." CHIESI replied, "I'm radio silent."

v. On or about September 9, 2008, at approximately 10:22 a.m., CHIESI used Chiesi Landline A to call the AMD Executive. CHIESI asked about the timing of the announcement of the AMD Reorganization, and the AMD Executive replied that it was "gonna be sometime by the end of the month."

w. On or about September 9, 2008, at approximately 11:39 a.m., KURLAND called CHIESI on Chiesi Landline A. The two discussed New Castle's position in AMD stock, and later CHIESI said, "Unless you were on the phone with [the AMD Executive] and had MOFFAT at your house last night, who the fuck would be buying it honestly?"

x. On or about September 16, 2008, at approximately 12:13 p.m., the AMD Executive called CHIESI on Chiesi Landline A. There was a brief discussion of the AMD Reorganization during which the AMD Executive said, "You know,

we're gonna shock the hell out of everybody." In regards to the timing, the AMD Executive said that it would not be next week, and "99 percent" in October. CHIESI asked, "Before you print [quarterly earnings]?" The AMD Executive replied, "Yes."

y. On or about September 17, 2008, at approximately 10:38 a.m., CHIESI used Chiesi Landline B to call Rajaratnam on the Rajaratnam Cell Phone. She told Rajaratnam that the AMD Executive said that the deal would be announced during the first week of October. CHIESI also said that the AMD Executive described the deal as "unbelievable."

z. On or about September 22, 2008, at approximately 3:09 p.m., MOFFAT called CHIESI on Chiesi Landline A. CHIESI knew that MOFFAT had recently met with AMD regarding the AMD Reorganization, and she asked him how it went. MOFFAT replied that there was "no new news," and that they were going to "try to announce by 10/10," referring to October 10, 2008. MOFFAT also said that the process to obtain government approval "starts Thursday."

aa. On or about September 23, 2008, at approximately 1:25 p.m., Rajaratnam called CHIESI on Chiesi Landline A. Rajaratnam and CHIESI discussed the timing of the announcement of the AMD Reorganization. Later, Rajaratnam told CHIESI, "I have their numbers." Based on my experience and on other intercepted wire communications to which I have listened, I believe that Rajaratnam meant that he had obtained AMD's revenue for the quarter ending in September 2008. Rajaratnam proceeded to tell CHIESI that AMD's quarterly revenue was "1600" (which I believe refers to \$1.6 billion), that "processors" accounted for "1040" (\$1.04 billion), and that "graphics" accounted for "315" (\$315 million). Rajaratnam told CHIESI that she "came to the right place to get that information. Tell me I'm the best in AMD.... You might know [the AMD Executive] or whoever... I wanted to compete with you in your home yard, in your backyard.... I must defer to you on IBM." CHIESI replied, "And Akamai, too." Rajaratnam replied, "Akamai, too. But AMD? Bring it on baby."

bb. On or about September 30, 2008, at approximately 2:21 p.m., Rajaratnam called CHIESI on Chiesi Landline A. Referring to the date of the announcement of the AMD Reorganization, Rajaratnam told CHIESI, "the date is October 7th." CHIESI later said that she was "glad that we talk on a secure line, I appreciate that," to which Rajaratnam replied, "I never call you on my cell phone." CHIESI said that she was "nervous" about being investigated. Rajaratnam advised her to buy shares of AMD stock and then to sell half before the announcement.

Rajaratnam said that the announcement will say that "they" will put in five to six billion dollars.

cc. On or about September 30, 2008, at approximately 2:25 p.m., CHIESI used Chiesi Landline A to call KURLAND. She told KURLAND that "Raj [Rajaratnam] has confirmation that, uh, AMD deal gets done on... [October] 7th." KURLAND later said that he would "buy a little today."

dd. On or about September 30, 2008, CHIESI caused certain accounts affiliated with New Castle to purchase approximately 127,600 shares of AMD stock at a price of approximately \$4.51 per share. As of the end of September 2008, accounts affiliated with New Castle held more than 2.3 million shares of AMD stock.

ee. On October 7, 2008, at approximately 8:00 a.m., AMD announced plans to spin off its manufacturing operations in the form of a multibillion-dollar joint venture with the Advanced Technology Investment Company ("ATIC") of Abu Dhabi. In exchange for 56 percent of the fab (50 percent voting rights), ATIC would pay \$700 million to AMD, and the fab would assume \$1.2 billion of AMD debt. In addition, a different entity (also based in Abu Dhabi) would increase its investment in AMD to 19.3 percent. ATIC committed to putting in to the fab at least \$3.6 billion, and as much as \$6 billion, of additional funds over five years.

ff. On October 7, 2008, at approximately 9:30 a.m., AMD stock opened trading at a price of \$5.27 per share, up approximately 25 percent (approximately \$1.04) over the previous day's closing price of \$4.23 per share.

29. Based on my review of account statements and news articles, as well as intercepted wire communications, I believe that New Castle did not profit from its trading in the securities of AMD described above (in the aggregate) due in part to a global financial crisis that precipitated a broad decline in stock markets in or about September and October 2008.⁴ Between the date on which New Castle began to acquire shares of AMD stock (August 15, 2008), and the eve of the announcement of the AMD Reorganization (October 6, 2008), shares of AMD stock fell from approximately \$5.87 per share to \$4.23 per share (28 percent).

⁴ New Castle may, however, have avoided certain losses by selling put options on October 6, 2008, the day before the announcement.

The announcement of the AMD Reorganization caused the share price to open up approximately 25 percent (at \$5.27 per share), but the value of AMD stock subsequently declined again along with the broader market sell-off. New Castle did not begin to sell shares of AMD stock until on or about October 20, 2008, on which date AMD opened at a price of \$4.25 per share.

Insider Trading in the Securities of IBM

30. I believe that in addition to conspiring to engage in insider trading with respect to AMD, as is described above, DANIELLE CHIESI and ROBERT MOFFAT, the defendants, have also conspired to engage in insider trading in the securities of IBM. The basis for my belief is my review of wire communications intercepted over the Chiesi Phones and the CW-1 Cell Phone, phone calls between CHIESI and another individual who subsequently began to cooperate with the government's investigation ("CW-2"), phone records provided by certain telecommunications companies, account statements provided by New Castle's prime broker, and news reports and public records, which information includes the following:

a. On or about September 8, 2008, at approximately 10:34 a.m., CHIESI used Chiesi Landline B to call MARK KURLAND, the defendant. They discussed whether to sell a position in IBM stock. KURLAND asked CHIESI whether she wanted to sell, and CHIESI replied, "NO. I want to wait until my IBM guy talks to me."

b. On or about September 8, 2008, at approximately 12:31 p.m., CHIESI received a call on Chiesi Landline A from MOFFAT. They discussed arrangements to see each other later that day. CHIESI then said that she had "a couple of other questions business-wise." She later said that she thought that many technology companies would make negative "pre-announcements." She asked whether MOFFAT had "any sense" of what his business looked like. MOFFAT replied that IBM had released an 8-K that said that they are seeing no change, and that he had not yet seen August's financial results.

c. On or about September 9, 2008, at approximately 10:30 a.m., an individual affiliated with New Castle called CHIESI on Chiesi Landline A. CHIESI said that she "had dinner with IBM." CHIESI said, "He's saying, you know, [IBM's] Z-series looks really good. He's saying that everything looks fine but... it comes down to the... final last week. But he thinks right now that they are on track. As of right now he's not even worried a little bit, I mean, we think we can beat the numbers this quarter." Based on my training and experience, I believe that when CHIESI said that it

comes down to the "final last week," she was referring to the last week of IBM's quarter - the last week of September 2008.

d. On or about September 26, 2008, at approximately 1:57 p.m., CHIESI used Chiesi Landline B to call Rajaratnam. CHIESI and Rajaratnam discussed whether MOFFAT could potentially move from IBM to a different technology company. Rajaratnam said, "Put him in some company where we can trade well." CHIESI replied, "I know, I know. I'm thinking that, too. Or just keep him at IBM, you know, because this guy is giving me more information.... I'd like to keep him at IBM right now because that's a very powerful place for him. For us, too." Rajaratnam replied, "Only if he becomes CEO." CHIESI replied, "Well, not really. I mean, come on.... you know, we nailed it."

e. On or about September 30, 2008, at approximately 11:09 a.m., Rajaratnam called CHIESI on Chiesi Landline A. CHIESI told Rajaratnam that "IBM" had not yet "seen the numbers." Referring to IBM's ability to consistently meet analysts' expectations, Rajaratnam commented that IBM "always bring[s] it together" because they "have so many levers." CHIESI replied, "Yeah, and you know MOFFAT's terrific, what he does in putting everything together.... I would love for him to stay at IBM if he wants to, but I need... as long as he's there, I need those fucking numbers. I need to be right on this stock. He's a huge, he's a huge coup for me, having him at IBM.... I just want to make sure that at least from now 'til the end of the year we can bang out two more IBM quarters."

f. On or about Thursday, January 8, 2009, at approximately 6:25 p.m., a call was placed from a telephone number used by MOFFAT to Chiesi Landline A, lasting approximately eight minutes. Shortly thereafter, a second call was made from a telephone number used by MOFFAT to Chiesi Landline A, lasting approximately nine minutes.

g. On or about the following day - Friday, January 9, 2009 - certain accounts affiliated with New Castle began to cover a short position in IBM stock. Between January 9, 2009 and January 15, 2009, certain accounts affiliated with New Castle covered a short position of 176,900 shares of IBM stock, and purchased an additional 177,300 shares of IBM stock.

h. On or about January 19, 2009, at approximately 9:00 p.m., a call was placed from a telephone number used by ROBERT MOFFAT, the defendant, to Chiesi Landline A. The call lasted approximately 32 minutes.

i. On the following day - January 20, 2009 - at approximately 1:01 p.m., CHIESI called CW-1 on the CW-1 Cell Phone. (The call took place before CW-1 was approached by the Government and began to cooperate with the Government's investigation.) CHIESI said, "I'm buying IBM going into the print." CHIESI said, "If I wasn't closer to the situation I'd be, I would so short this fucking thing. But I'm thinking they could beat, and they really could guide up." Based on my training and experience and on other intercepted communications, I believe that CHIESI meant that she was buying IBM stock because she believed that when IBM announced quarterly earnings later that day, after the close of the market, IBM's announcement would "beat" analysts' expectations. CW-1 replied that "the question" is whether IBM provides guidance for 2009. CHIESI said that she was "not sure," and later she said, "You know, my guy said easily they could, they could add 30 cents to the bottom line. Easily, easily. That's what he says, to the bottom line in '09.... I don't think anybody is talking about a beat this quarter." Based on my training and experience, I believe that when CHIESI said that IBM could "add 30 cents to the bottom line," she meant that IBM's earnings per share in 2009 could be 30 cents higher than they were in 2008.

j. On or about January 20, 2009, certain accounts affiliated with New Castle purchased approximately 45,200 shares of IBM stock, at a price of approximately \$82.72 per share.

k. On or about January 20, 2009, following the close of the market, IBM announced its earnings for the quarter ending in December 2008. Earnings per share were \$3.28, which beat analysts' expectations of \$3.03. IBM also announced that it expected earnings per share in 2009 of at least \$9.20, which was 27 cents more than IBM's earnings per share in 2008 (\$8.93), and higher than analysts' expectations of \$8.75. On January 21, 2009, at approximately 9:30 a.m., IBM stock opened at \$86.29 per share, up approximately 5 percent (approximately \$4.31) over the previous day's close of \$81.98 per share.

l. Between January 21, 2009 and January 30, 2009, certain accounts affiliated with New Castle sold approximately 109,000 shares of IBM stock, at prices ranging from \$88.83 to \$93.24 per share, for a profit of approximately \$500,000.

m. On or about April 20, 2009, CW-2 called CHIESI and consensually-recorded the call at the direction of the FBI. During the call, CHIESI said that she asked MOFFAT what IBM's quarter looked like. CW-2 said, "You flat out asked him?" CHIESI replied, "Yeah...." CHIESI said, "so here's what I think." CHIESI said that "they'll miss the revs [referring to revenues]"

by seven percent, and that IBM will also "miss the short term" signings but "make total signings." CHIESI told CW-2 that the "bottom line," referring to earnings per share, "looks good."

n. On or about April 20, 2009, following the close of the market, IBM announced its earnings for the quarter ending in March 2009. IBM announced revenues of \$21.7 billion, which missed analysts' expectations (\$22.5 billion) by approximately four percent. Short-term contract signings fell 14 percent to \$5.5 billion, but long-term services signings were up 14 percent to \$7 billion. Earnings per share (the "bottom line") was \$1.70, which was higher than analysts' expectations of \$1.66.

Insider Trading in the Securities of Sun

31. I believe that in addition to conspiring to engage in insider trading with respect to AMD and IBM, as is described above, DANIELLE CHIESI and ROBERT MOFFAT, the defendants, have also conspired to engage in insider trading in the securities of Sun. The basis for this belief is a review of certain wire communications intercepted over the CW-1 Cell Phone, documents publicly available over the Internet, phone calls between CHIESI and CW-2 that were consensually recorded by CW-2, phone records provided by certain telecommunications companies, account statements provided by New Castle's prime broker, and information obtained from the SEC, which information includes the following:

a. On or about December 19, 2008, in connection with discussions on the subject of a potential business combination, IBM and Sun entered into a confidentiality agreement.

b. On or about January 19, 2009, IBM conducted due diligence on Sun in Dallas, Texas. MOFFAT was among nine executives who attended the due diligence on behalf of IBM.

b. On or about Saturday, January 24, 2009, at approximately 12:37 p.m., a call was placed from a telephone number used by MOFFAT, the defendant, to Chiesi Landline A. The call lasted approximately 15 minutes.

b. Immediately following this call, CHIESI received a phone call on Chiesi Landline A from a number subscribed to New Castle Funds LLC. The call lasted approximately 29 minutes.

c. On or about Monday, January 26, 2009, certain accounts affiliated with New Castle purchased approximately 283,600 shares of Sun at a price of approximately \$3.80 per share.

d. On or about January 26, 2009, CHIESI called CW-1 on the CW-1 Cell Phone. (The call took place before CW-1 was approached by the Government and began to cooperate with the Government's investigation.) CHIESI said, "JAVA," and indicated that "they print tomorrow." Based on my experience, I believe that CHIESI meant that Sun, which trades under the symbol "JAVA," was going to be announcing its quarterly earnings on the following day. CW-1 replied that he had heard that it was "horrible." CHIESI said, "My IBM guy said that he thinks they're gonna beat the quarter." Referring to her "guy" at IBM, CHIESI said that "he said... 'by the way, I think JAVA beat the top, beat the bottom, Sun did....' The only way he would know is 'cuz they're doing the due diligence on them." Based on my training and experience, I believe that CHIESI meant that Sun would announce that the company's quarterly revenue ("the top") and its earnings per share ("the bottom") exceeded analysts' expectations. Later, CHIESI said, "The only way... he would know is because I know they were doing due diligence." Later, CHIESI said, "IBM is looking at it as a takeover." She added, "The only reason my guy would know that is because it's his deal. Like, he's in bed with them." CW-1 replied, "I see, I see. Ok." CHIESI continued, "You see what I mean... not because he's just speculating." (Based on public news reports, I know that on or about March 18, 2009, it was reported that IBM was in talks to acquire Sun.)

e. Approximately 30 minutes later, CHIESI called CW-1 on the CW-1 Cell Phone. CHIESI said, "IBM is telling me... [Sun is] gonna do fine." CHIESI told CW-1 that the "top" would be "3.2," meaning that Sun's quarterly revenue would be \$3.2 billion. CHIESI said that Sun would also take restructuring charges. CHIESI said, "let's just get involved with this at the same time. There's plenty of money to make."

f. On or about Tuesday, January 27, 2009, certain accounts affiliated with New Castle purchased approximately 784,900 shares of Sun at prices ranging from approximately \$3.97 to \$4.28 per share.

g. On January 27, 2009, after the close of the market, Sun announced its quarterly earnings for the quarter ending in December 2008. Sun announced that its revenue for the quarter was \$3.22 billion, exceeding analysts' expectation of \$3.16 billion. Sun also announced that it was taking restructuring charges. On the following day, shares of Sun opened at \$4.32, up approximately eight percent (\$0.33) over the previous day's close.

h. Between January 28, 2009 and February 9, 2009, certain accounts affiliated with New Castle sold approximately 949,900 shares of JAVA at prices ranging from approximately \$4.73 to \$5.72 per share, realizing a profit on those shares sold during this time period of more than \$900,000.

i. On or about April 20, 2009, CW-2 called CHIESI and consensually recorded the call. Before discussing IBM's quarterly earnings announcement, as is described above in paragraph 30(m), CW-2 and CHIESI first discussed Sun. Based on public news reports and information publicly-available over the Internet, I know that between March 18, 2009 (when it was reported that IBM might acquire Sun) and April 19, 2009, Sun stock had decreased in value due, in part, to reports indicating that IBM's deal to acquire Sun might fall through. On or about April 20, 2009, Oracle stepped in and announced its intention to acquire Sun at a price of approximately \$9.50 per share, a premium of approximately 42 percent (approximately \$2.81) over Sun's closing price on April 17, 2009 (\$6.69). During the call, CHIESI told CW-2 that she got her "ass kicked" in JAVA. CHIESI told CW-2 that she was short. CHIESI said that MOFFAT had told her that Sun's revenue would be "down 27 percent" when Sun printed, and that the "street's down 17." CHIESI said that she thought that she would get a "heads up" if IBM was going to buy it.

WHEREFORE, deponent prays that arrest warrants be issued for the above-named defendants and that they be imprisoned or bailed as the case may be.



DIANE M. WEHNER
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
15 day of October, 2009


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK