

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— SDNY: SEC Brings Insider Trading Charges in Foundry Networks Deal, (Mar. 27, 2013)

By Mark S. Nelson, J.D.

The SEC has filed an insider trading complaint against Matthew G. Teeple, David T. Riley, and John V. Johnson in the federal district court in Manhattan. The SEC alleged that Mr. Riley tipped Mr. Teeple, who in turn tipped Mr. Johnson and others, about material, nonpublic information regarding Foundry Networks, Inc. (Foundry) ahead an announcement that it would be acquired by Brocade Communications Systems, Inc. (Brocade) (*Securities and Exchange Commission v. Matthew G. Teeple, et.al.*, March 26, 2013).

Background. The SEC's complaint alleged that Mr. Riley, Foundry's then-chief information officer and vice president of information systems, tipped Mr. Teeple about Brocade's impending acquisition of Foundry. Mr. Teeple then allegedly tipped a colleague at hedge fund adviser "Investment Adviser A," Mr. Johnson, and other former colleagues and friends. The SEC alleged that all of the tippees traded Foundry securities after receiving the tips.

Foundry's stock traded at \$13.66 per share the day before Brocade announced the Foundry deal on July 21, 2008. Foundry's stock surged to \$18.08 after the announcement. The SEC alleged that "Investment Adviser A" had gains (and avoided losses) of \$21 million. Mr. Johnson allegedly made \$136,000 from buying Foundry's equities and options while shorting Brocade's equities. The remaining beneficiaries of Mr. Teeple's tips allegedly gained an aggregate of \$1.1 million. The SEC also alleged that Mr. Riley had tipped Mr. Teeple about a Foundry earnings report and Foundry's delayed vote on the Brocade deal.

According to the complaint, Mr. Teeple is an analyst at "Investment Adviser A" that met Mr. Riley when they both previously worked for an unnamed technology company. Mr. Riley was Foundry's chief information officer at the time it was acquired by Brocade, but he currently holds the same title at another public company.

Mr. Johnson was a senior analyst and portfolio manager for a Denver, Colorado-based asset manager at the time Brocade acquired Foundry. Mr. Johnson met Mr. Teeple when the Denver asset manager was a client of another of Mr. Teeple's former employers. Mr. Johnson was unemployed when Brocade acquired Foundry but still traded for his own and his family's accounts. Mr. Johnson, who once had Series 7 and 63 licenses, is now chief investment officer for an unidentified state pension system.

Relief sought. The SEC's complaint charges Mr. Teeple, Mr. Riley, and Mr. Johnson with violating Exchange Act Section 10(b) and Rule 10b-5 and Securities Act Section 17(a). The SEC

asked the court to permanently enjoin all three defendants from engaging in the charged conduct. The SEC also asked the court to order each of the defendants to jointly and severally pay disgorgement (with prejudgment interest) and to pay civil monetary penalties. Additionally, the SEC asked the court to impose an officer and director bar on Mr. Riley.

The case is No. 13 CV 2010.

Attorneys: Sanjay Wadhwa, Senior Associate Director, for the Securities and Exchange Commission.

Companies: Brocade Communications Systems, Inc.; Foundry Networks, Inc.

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