

13 MAG 1877

Approved:

John J. O'Donnell
JOHN J. O'DONNELL
ARLO DEVLIN-BROWN
Assistant United States Attorneys

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

- - - - - X
: UNITED STATES OF AMERICA : SEALED COMPLAINT
: :
- v. - : Violations of 18 U.S.C. §§
: 371, 1349
SANDEEP AGGARWAL :
: COUNTY OF OFFENSE:
Defendant. : NEW YORK
: :
- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

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

COUNT ONE
(Conspiracy to Commit Securities Fraud)

1. From at least in or about May 2009 up to and including in or about July 2009, in the Southern District of New York and elsewhere, SANDEEP AGGARWAL, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

2. It was a part and object of the conspiracy that SANDEEP AGGARWAL, the defendant, and others known and unknown, 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 the purchaser and seller, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Overt Acts

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

a. On or about July 9, 2009, SANDEEP AGGARWAL, the defendant, had a telephone call with a co-conspirator not named as a defendant herein who worked for Microsoft Corporation ("CC-1").

b. On or about July 10, 2009, AGGARWAL had a telephone call with Richard Lee, a portfolio manager at a hedge fund with an office in New York, New York, in which AGGARWAL discussed a pending transaction between Microsoft and Yahoo! Inc. ("Yahoo").

c. On or about July 10, 2009, following his telephone call with AGGARWAL, Lee's hedge fund purchased shares of Yahoo stock and Lee purchased Yahoo stock in his personal account.

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

COUNT TWO

(Conspiracy To Commit Wire Fraud)

4. From at least in or about May 2009 up to and including in or about July 2009, in the Southern District of New York and elsewhere, SANDEEP AGGARWAL, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States of America, to wit, wire

fraud, in violation of Title 18, United States Code, Section 1343.

5. It was a part and an object of the conspiracy that SANDEEP AGGARWAL, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

6. In furtherance of the conspiracy and to effect the illegal object thereof, SANDEEP AGGARWAL, the defendant, and others known and unknown, committed the same overt acts set forth above in Count One of this Complaint, among others, in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 1349.)

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

7. I have been a Special Agent with the Federal Bureau of Investigation for approximately 7 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 these offenses, and I have made and participated in making arrests of numerous individuals for participating in such offenses.

8. 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 and agents, including: (a) e-mails, recordings and other materials obtained from various sources; (b) communications with representatives of certain companies; (c) publicly available information; (d) a review of trading, and telephone records; and (e) interviews conducted by myself and other law enforcement agents of various persons, including an interview of SANDEEP AGGARWAL, the defendant. 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 the contents of documents, conversations with others, and events are

referred to herein, they are related in substance and in part. Where figures and calculations are set forth herein, they are approximate.

Relevant Individuals and Entities

9. At all times relevant to this Complaint, SANDEEP AGGARWAL, the defendant, was a senior internet research analyst for a financial services firm (the "Firm"), based in the Firm's San Francisco, California office. AGGARWAL's duties included, among other things, researching information about public companies and disseminating reports and analysis to assist Firm clients in making investment decisions. Based upon my conversation with AGGARWAL, I have learned that prior to becoming a research analyst, he worked at Microsoft. In addition, based on my conversation with AGGARWAL and my review of immigration records, I have learned that AGGARWAL currently is a citizen of India and has resided in India since in or about August 2011. I have also learned that AGGARWAL presently resides in India, but has permanent residency status in the United States.

10. At all times relevant to this Complaint, CC-1 was an employee of Microsoft, was friends with SANDEEP AGGARWAL, the defendant, and communicated frequently by telephone and e-mail with the AGGARWAL. Based on my review of documents from Microsoft, I have learned that at all times relevant to this Complaint, CC-1 was employed in the division of Microsoft responsible for Microsoft's Bing internet search engine.

11. At all times relevant to this Complaint, Richard Lee was employed as a portfolio manager with an investment advisor that managed the assets for a group of affiliated hedge funds ("Hedge Fund A"). At all times during his employment by Hedge Fund A, Lee either managed or co-managed an up to \$1.25 billion portfolio that focused on "special situations" such as mergers, acquisitions, private equity buy-outs, and corporate restructurings in publicly traded companies across various industry sectors. On or about July 23, 2013, Lee pled guilty in federal court to a criminal Information charging Lee with conspiracy and securities fraud. At his guilty plea, Lee admitted that he purchased and sold securities based on inside information during his employment at Hedge Fund A.

12. Based on my review of publicly available information, I have learned that, at all times relevant to this Complaint, Microsoft was a technology company headquartered in Redmond, Washington, and listed on the NASDAQ Stock Market.

13. Based on my review of publicly available

information, I have learned that, at all times relevant to this Complaint, Yahoo was a technology company headquartered in Sunnyvale, California, and listed on the NASDAQ Stock Market.

The Microsoft-Yahoo Strategic Partnership

14. Based upon my review of publicly available information, I have learned that on or about July 29, 2009, Microsoft and Yahoo publicly announced a strategic partnership in internet search and advertising (the "Partnership"). According to a joint press release issued by both companies, the terms of the Partnership set forth, among other things, specific criteria relating to the Partnership's term, licensing information, compensation and revenue sharing, and implementation timetable.

15. Yahoo further announced that it estimated that, after the Partnership was fully executed, based on its then-current levels of revenue and operating expenses, that the partnership would provide a benefit to Yahoo's annual GAAP operating income of approximately \$500 million and capital expenditure savings of approximately \$200 million. Yahoo also stated that it estimated that the Partnership would provide a benefit to annual operating cash flow of approximately \$275 million.

Confidentiality

16. Based on my review of documents from Microsoft, I have learned that, at all times relevant to this Complaint, Microsoft's policies prohibited the unauthorized disclosure of Microsoft's material nonpublic information to any third party. Microsoft's policies specifically identified "a significant agreement with another company, such as a joint development agreement," as an example of material nonpublic information. Based on communications with a representative of Microsoft, I have learned that (a) as of July 10, 2009, the status of the negotiations between Microsoft and Yahoo, and proposed terms of the transaction, including the timing of an expected announcement, were confidential to Microsoft (the "Confidential Information"); (b) the "Confidential Information" was treated as confidential by Microsoft as of July 10, 2009; and (c) the Confidential Information was of value to Microsoft.

17. Based on my review of documents from the Firm, I have learned that, at all times relevant to this Complaint, the Firm's written supervisory procedures stated, in substance and in part, that: "It is unlawful, under federal and state securities laws, for any person to trade and/or recommend trading in securities on the basis of material and nonpublic, or inside

information. [The Firm's] policies require strict avoidance of the misuse of inside information." The Firm's procedures defined "material information" as information that "has market significance in that it is likely to influence reasonable investors, including reasonable speculative investors, in determining whether to trade the securities to which the information relates." The Firm's procedures further stated that "[f]raudulent misuse of inside information includes . . . tipping such information to anyone or using it as a basis for recommending, by way of research report or otherwise, the purchase or sale of securities." All of the Firm's employees were required to sign an attestation that they had read and understood the Firm's policies prohibiting the misuse of inside information and swearing to "uphold and comply with the rules, restrictions and procedures enforced by [The Firm]."

AGGARWAL's Research Reports Concerning
The Microsoft-Yahoo Partnership

18. Based upon my interview of SANDEEP AGGARWAL, the defendant, and my review of documents provided by the Firm, I have learned that AGGARWAL followed the progress of the Microsoft-Yahoo negotiations concerning the proposed partnership. For example, I have reviewed a number of research reports discussing the Partnership that were prepared by AGGARWAL and issued by the Firm, including reports dated February 26, 2009; March 9, 2009; March 30, 2009; April 22, 2009; May 21, 2009; May 28, 2009; June 16, 2009; June 19, 2009; July 13, 2009; and July 22, 2009. These reports are disseminated to, among others, Firm clients.

19. Based on my review of research reports prepared by SANDEEP AGGARWAL, the defendant, I have learned that on or about June 16, 2009, AGGARWAL issued a research report entitled "N-T Likelihood of MSFT/YHOO Search Deal Materially Lower." In this report, AGGARWAL stated, in substance, that the likelihood of the MSFT/YHOO deal had "gone down materially in recent weeks" and reduced his estimation of the probability of the deal from 80% to 50%.

AGGARWAL's Relationship With CC-1

20. I have learned the following about the relationship between SANDEEP AGGARWAL, the defendant, and CC-1:

a. Based upon my conversation with AGGARWAL, I have learned that he and CC-1 were friends.

b. Based upon my review of telephone records, I

have learned that AGGARWAL and CC-1 communicated frequently by telephone. For example, based on my review of records for telephones registered to AGGARWAL, and CC-1 and his wife, I have learned that between on or about May 7, 2009 and on or about July 10, 2009, there were approximately 80 contacts between a phone registered to AGGARWAL and a phone registered to CC-1 or his wife.

c. Based on my review of documents provided by Microsoft, I have learned that CC-1 received copies of AGGARWAL's research reports, including research reports that related to Microsoft and/or Yahoo, and reports that discussed the Partnership. For example, based upon my review of documents provided by Microsoft and CC-1, I have learned that CC-1 received, among others, the following research reports prepared by AGGARWAL: reports dated February 26, 2009; March 9, 2009; March 30, 2009; April 22, 2009; May 21, 2009; May 28, 2009; June 16, 2009; June 19, 2009; July 13, 2009; and July 22, 2009.

AGGARWAL'S Communications With
CC-1 on July 9, 2009

21. Based on my review of the records for a cellular telephone registered AGGARWAL, the defendant, I have learned that on or about July 9, 2009, CC-1's cellular telephone contacted AGGARWAL at approximately 4:42 p.m. That call apparently lasted approximately 20 seconds. The next contact between the two phones on that date is a call from AGGARWAL's cellular telephone to CC-1's cellular telephone at approximately 7:06 p.m. The records indicate that the 7:06 p.m. call lasted approximately 10 minutes.

AGGARWAL'S Communications With Others On July 9 and 10, 2009

22. Based on my review of documents provided by a former employee of the Firm, I have learned that on or about July 9, 2009, at approximately 11:22 p.m., SANDEEP AGGARWAL, the defendant, sent an email to a sales executive at the Firm (the "Sales Executive") asking if they can talk before the Firm's daily 7:00 morning call (the "Morning Call"). From my conversations with present and former representatives of the Firm, I have learned that the Morning Call refers to a daily meeting held by the Firm at which analysts provide the traders and sales personnel with reports and analysis of possible investment opportunities. Later that night, at approximately 1:23 a.m. on or about July 10, 2009, AGGARWAL sent another email to the Sales Executive stating "would like to be on the morning call with some interesting update."

23. The following morning, on or about July 10, 2009,

at approximately 7:17 a.m., the Sales Executive responded to AGGARWAL indicating that he had tried to reach him, and at 8:13 a.m., after the Firm had conducted its Morning Call, AGGARWAL responded that "you know now so no need to talk." Based upon the foregoing communications, I believe that AGGARWAL participated in the Morning Call on July 10, 2009.

24. Based upon my review of documents provided by Hedge Fund A and by the Firm, I have learned that on or about July 10, 2009, several employees of the Firm advised clients, in substance, that SANDEEP AGGARWAL, the defendant, had heard that talks between Microsoft and Yahoo had heated up and that a deal was possible in the next week or two. At approximately 8:15 a.m. on or about July 10, 2010, the Sales Executive sent an email to clients, including individuals at Hedge Fund A, stating, in substance, that with respect to the Microsoft-Yahoo transaction, "we are hearing deal talks are starting again."

25. Based on my review of an email that SANDEEP AGGARWAL, the defendant, sent to another employee of the Firm, I have learned that, on or about July 10, 2009, AGGARWAL spoke to approximately 14 traders or portfolio managers at various hedge funds concerning the potential Microsoft-Yahoo Partnership.

26. Based upon my review of documents provided by the Firm, and by a former employee of the Firm, including a recorded call, I have learned that on or about July 10, 2009, SANDEEP AGGARWAL, the defendant, conveyed material non-public information concerning the Partnership to a trader at a different hedge fund ("Hedge Fund B"). Based upon my review of the recorded call, I have learned that AGGARWAL told the trader, in substance, that he had heard from his "best industry contact, senior guy at Microsoft," that the last few days Microsoft and Yahoo had re-engaged in talks for a possible search deal. Among other things, AGGARWAL told the trader, in substance and in part, that (a) senior people from Yahoo were visiting Microsoft's headquarters for the last few days and that the level of seriousness of the talks was "much higher;" (b) AGGARWAL's contact had told him that, due to the success of Bing, Microsoft had a "position of power" and that Yahoo had moved closer to Microsoft's offer; and (c) AGGARWAL's contact thought that a search partnership could be announced within the next week or two.

27. Based on my review of documents obtained from the Firm, including a recorded telephone call between SANDEEP AGGARWAL, the defendant, Lee, and the Sales Executive, I have learned that on or about July 10, 2009, in a telephone call commencing at or around 11:28 a.m., AGGARWAL conveyed material non-public information concerning the Partnership to Richard Lee.

Based on my review of the recording of the call, I have learned that AGGARWAL stated the following, in substance and in part:

a. "[A] month back, [AGGARWAL] made a call that [the] Microsoft and Yahoo deal is actually not happening in near term" but that "late last night," a reference to July 9, 2009, he spoke with "a senior guy at Microsoft" who has been "very, very accurate in the past [] in terms of, you know, telling me what's going on."

b. AGGARWAL'S source told him that a senior team from Yahoo was at Microsoft's Redmond, Washington headquarters meeting with specific senior Microsoft executives in Microsoft's internet business (the "Microsoft Executives").

c. Senior executives at Microsoft were asking AGGARWAL'S source questions that gave him the "sense that this deal may be actually happening very soon now."

d. "[H]e told me that this time-basically Microsoft is coming from a position of power because of success of Bing, and Yahoo is feeling a little nervous, so Yahoo is actually willing to come closer to Microsoft's best offer, um, and in order to make [the] deal effective enough for Yahoo, Microsoft is willing to-willing to broaden the deal scope from-just from pure search to, uh, showing some display and some other elements . . ." and that "it is possible that this deal may happen any time now in the next two weeks."

e. In response to Lee's questions about how confident AGGARWAL was in his information, AGGARWAL stated that: (i) the person had been with Microsoft for ten years; (ii) the person was AGGARWAL'S "buddy" and AGGARWAL knows him "intimately well;" (iii) AGGARWAL knew his source before he joined Microsoft; and (iv) AGGARWAL'S source was a "very senior guy in Microsoft internet business."

f. AGGARWAL reiterated to Lee that he (AGGARWAL) had spoken with his contact the prior day and his contact had said that the probability of the Partnership was "sixty percent plus" based upon the information that senior Microsoft executives were requesting and the fact that "three days back, a very senior team from Yahoo came to Redmond" and were meeting with very senior Microsoft executives. AGGARWAL stated that his source had just returned from a vacation, and had told AGGARWAL that upon his return he saw that Yahoo people were at the campus and that "things are really heating up."

g. Lee thanked AGGARWAL for the information,

recognized that it was helpful, and asked AGGARWAL to contact him if he heard anything else.

28. Based upon my investigation, I have learned the following facts that are consistent with the statements made by SANDEEP AGGARWAL, the defendant, in his call with Lee:

a. As described in paragraph 19, above, on or about June 16, 2009, AGGARWAL issued a research report in which AGGARWAL stated, in substance, that the likelihood of the MSFT/YHOO deal had "gone down materially in recent weeks" and reduced his estimation of the probability of the deal from 80% to 50%.

b. As described in Paragraph 10, above, CC-1 worked in Microsoft's Bing internet division.

c. As described in Paragraph 21, above, telephone records indicate that AGGARWAL communicated with CC-1 on or about July 9, 2009 in the evening.

d. Based upon my review of documents provided by Microsoft, I have learned that Yahoo representatives met with Microsoft representatives in Seattle, Washington on or about July 6 and 7, 2009.

e. Based on my review of documents provided by Microsoft, I have learned that the Microsoft Executives whom AGGARWAL specifically identified in his conversation with Lee were in fact involved with the negotiations concerning the Partnership.

f. Based on my review of information provided by CC-1, I have learned that CC-1 was on vacation from on or about June 27, 2009 to on or about July 7, 2009.

Lee's Yahoo Trades On July 10, 2009

29. Based on my review of documents provided by Hedge Fund A, I have learned that, following Lee's conversation with SANDEEP AGGARWAL, the defendant, several hundred thousand shares of Yahoo stock were purchased in Lee's portfolio at Hedge Fund A. In addition, based upon my review of trading records for Lee's personal trading account, I have learned that, after his call with AGGARWAL, Lee purchased approximately 25,000 shares of Yahoo stock in his personal account.

AGGARWAL'S July 10, 2009 Research Report

30. Based upon my review of documents provided by the Firm, I have learned that on or about July 10, 2009, at approximately 4:56 p.m. (after the markets had closed), the Firm distributed a research report prepared by SANDEEP AGGARWAL, the defendant, in which AGGARWAL stated, in substance, that "early first impressions for Bing are net positive for a likely MSFT/YHOO search deal." In the report, AGGARWAL stated, in substance, that his view had been that Microsoft and Yahoo were having difficulty coming to terms on a search deal, but that the positive reception of Bing had given Microsoft bargaining leverage that made a deal more likely.

AGGARWAL'S Attempts To Cover-Up His Dissemination
of Material Nonpublic Information

31. Based upon my review of documents provided by the Firm, and an interview with a former employee at the Firm, I have learned the following:

a. On or about July 10, 2009, Hedge Fund B contacted the Firm and informed the Firm that it suspected that SANDEEP AGGARWAL, the defendant, was disseminating inside information.

b. Members of the Firm's senior management, and legal and compliance departments, questioned AGGARWAL about his communications with clients and his belief that there was a greater likelihood of a transaction between Yahoo and Microsoft. AGGARWAL stated, in substance, that his sources of information were industry participants, and not current employees of Microsoft or Yahoo nor professionals who could be involved with a transaction.

c. Following the interview, at approximately 1:46 p.m., AGGARWAL sent an e-mail to employees at the Firm, including the Firm's then-head of research, in which AGGARWAL stated "Please note that I have been making some comments on a likely MSFT/YHOO search deal/partnership since morning and suggesting a higher likelihood for MSFT/Yahoo search deal" and that "My comments about MSFT/YHOO are based on my own assessment . . . and I have not heard anything to this regard either from current MSFT/YHOO employees or any bankers/lawyers etc involved in MSFT/YHOO possible deal."

d. Subsequent to the 1:46 p.m. email, the Firm's management questioned AGGARWAL again and he reiterated his statement that he had not received information from any current

Microsoft or Yahoo employees. AGGARWAL identified his "best industry contact" (referenced in his call with Hedge Fund B) as a former employee of Microsoft, who left the company more than two years earlier, and AGGARWAL stated that he did not believe that his contact possessed material nonpublic information.

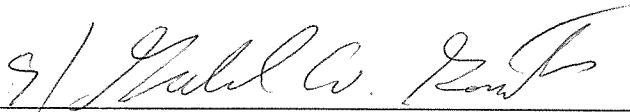
WHEREFORE, deponent prays that an arrest warrant be issued for SANDEEP AGGARWAL, the defendant, and that he be imprisoned or bailed as the case may be.



RONAN P. BYRNE
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

JUL 26 2013

Sworn to before me this
26 day of July 2013



THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

WARRANT FOR ARREST

United States District Court		DISTRICT SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA v. SANDEEP AGGARWAL		DOCKET NO. 13 MAG 1877	MAGISTRATE'S CASE NO.
		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED SANDEEP AGGARWAL	
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Order of Court <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input checked="" type="checkbox"/> Complaint		DISTRICT OF ARREST	
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER		CITY	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.			
DESCRIPTION OF CHARGES			
conspiracy to commit securities fraud conspiracy to commit wire fraud			
IN VIOLATION OF	UNITED STATES CODE TITLE	SECTION	
	18 18	371 1349	
BAIL	OTHER CONDITIONS OF RELEASE		
ORDERED BY GABRIEL W. GORENSTEIN UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK		SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) <i>Gabriel W. Gorenstein</i>	DATE ORDERED JUL 26 2013
CLERK OF COURT	(BY) DEPUTY CLERK	DATE ISSUED	
RETURN			
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.