

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID MICHAEL GUTMAN
(CRD 2779960)

AND

CHRISTOPHER JOHN TYNDALL
(CRD 3156096)

Respondents.

DISCIPLINARY PROCEEDING
No. 2012033227402

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

Summary

1. This matter involves unlawful insider trading and tipping. Respondents David Gutman and Christopher Tyndall engaged in a massive, serial insider trading scheme that generated more than \$9 million in profits by persons who traded in advance of the public announcements of 15 corporate mergers and acquisitions.

2. From March 2006 to October 2007 (the "Relevant Period"), David Gutman, a registered representative in J.P. Morgan Securities LLC's Conflicts Office, tipped his friend Christopher Tyndall, a registered representative at Meyers Associates, L.P., with material, nonpublic confidential information concerning at least 15 pending corporate merger or acquisition transactions (the "Tipped Securities"). Tyndall in turn tipped 13 retail customers of

his by recommending that they purchase the Tipped Securities. Tyndall's customers made profits of over \$1.7 million by trading ahead of news.

3. During the Relevant Period, Tyndall earned commissions exceeding \$870,000 for himself and his firm from his customers' purchases and sales in the Tipped Securities. The commissions far exceeded the total commissions that Tyndall earned for himself and his firm on transactions in other, non-insider-trading securities from September 2005 until he left the firm, in February 2010.

4. Tyndall also invested personally in at least two of the Tipped Securities and used his parents' securities account to engage in additional purchases of at least four Tipped Securities.

5. Tyndall also passed on the material, nonpublic information to at least four friends of his, three of whom also tipped brokerage customers, family, or friends. One such friend was a registered representative at a New York area brokerage firm. This broker tipped more than 40 of his customers by recommending that they purchase the Tipped Securities. His customers made approximately \$1.9 million in profits from trading in the Tipped Securities. A second friend of Tyndall's made nearly \$1.1 million by using a personal account to trade Tipped Securities ahead of news. A third friend who was tipped by Tyndall also tipped immediate family members and, together with his family, made more than \$450,000 in profits by trading Tipped Securities in their personal securities accounts. Yet another friend of Tyndall's made more than \$160,000 by trading Tipped Securities.

6. As a result of the foregoing misconduct, Gutman and Tyndall violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and NASD Rules 2120 and 2110.

The Respondents

7. David Gutman was first registered with a FINRA member firm in 1996. Gutman has been registered with J.P. Morgan Securities LLC (formerly J.P. Morgan Securities Inc.) since 2001. Gutman has Series 7, 24, 63, and 65 licenses.

8. Christopher Tyndall is a Corporate Securities Limited Representative. He has been registered with ten different FINRA member firms since entering the securities industry in 1998. Tyndall has Series 62 and 63 licenses. During the time that he engaged in insider trading, Tyndall worked at Meyers Associates, where he was registered from November 2004 until February 2010. After leaving Meyers Associates, Tyndall was registered with three other member firms, from February 2010 to June 2012. For two weeks, from February 13 to February 26, 2013, Tyndall was registered with Aegis Capital Corp. Tyndall has not been registered since his termination from Aegis on February 26, 2013.

9. Although he is no longer registered or associated with a FINRA member firm, Tyndall remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4, of FINRA's By-Laws because: (1) the Complaint was filed within two years after the effective date of termination of his registration with Aegis Capital, on February 26, 2013; and (2) the Complaint charges Tyndall with misconduct committed while he was registered with a FINRA member firm.

STATEMENT OF FACTS

Gutman's Position in J.P. Morgan's Conflicts Office

10. Gutman has worked in J.P. Morgan's Conflicts Office since 2003. According to the firm's written Conflicts Policy, the Conflicts Office reviews all transactions that may give rise to an actual or perceived conflict of interest for the firm. These include, for example,

instances where J.P. Morgan works with multiple clients whose interests may conflict and situations where J.P. Morgan's interests may conflict with those of a client. The Conflicts Office manages conflicts of interest by monitoring, clearing, and, where appropriate, limiting the firm's business activities and deal team staffing.

11. Activities that must be cleared by the Conflicts Office before inception include corporate finance and mergers and acquisitions advisory assignments, debt or equity acquisition financings, and acquisitions, joint ventures or similar arrangements undertaken by J.P. Morgan or its affiliates. Even after an activity is cleared by the Conflicts Office, investment bankers are required to report and obtain new clearance for proposed material changes in reported information, including changes in J.P. Morgan's role, the nature of the activity, and the completion or abandonment of the activity.

12. The Conflicts Office maintained a database called the Conflicts Reporting System ("CRS") which recorded J.P. Morgan's activities or engagements with its investment banking clients. CRS was updated, as events or developments warranted, by personnel assigned to the Conflicts Office, including Gutman.

13. Approximately 15 persons worked in the Conflicts Office in 2006 and 2007. Everyone in the Conflicts Office, including Gutman, had access to the CRS database and could review what deals were being reviewed for conflicts purposes, along with updates or changes to the status of each deal as developments warranted.

14. Everyone in the Conflicts Office, including Gutman, received an identifying email each time a new matter came into the office to be added to the CRS database. Conflicts Office personnel informally collaborated with one another on conflicts reviews. The Conflicts Office also held weekly staff meetings to discuss developments with respect to conflicts reviews.

J.P. Morgan's Insider Trading and Confidentiality Policy

15. At all relevant times, J.P. Morgan maintained investment banking and compliance procedures, which provided detailed standards of conduct prohibiting insider trading applicable to all personnel, including those in the Conflicts Office. The firm's written procedures and rules imposed an obligation to safeguard material, nonpublic or confidential information, prohibited the use of inside or material, nonpublic information to trade in securities, and prohibited the recommending of securities of an issuer while aware of material, non-public information about the issuer.

16. From his position in J.P. Morgan's Conflicts Office, Gutman had access to and became aware of confidential and material information concerning each of the 15 companies and Tipped Securities before the public dissemination of news.

17. J.P. Morgan's procedures and rules were applicable to Gutman and he was fully aware of them. During the period that he tipped Tyndall, Gutman signed attestations, in March 2006, May 2007, and June 2008, affirming that he had read, understood, and was in compliance with the firm's Code of Conduct. As a result, Gutman knew, or was reckless in not knowing, that he owed a fiduciary duty to J.P. Morgan and its clients to keep confidential and not disclose, personally use, or misappropriate the material, nonpublic information that he learned through or as a result of his employment with J.P. Morgan.

Relationship Between Respondents and Among Tyndall and His Tippees

18. Gutman and Tyndall were long-time personal friends. They grew up near each other on Long Island, knew each other in high school, and attended the same university for one year. Tyndall attended Gutman's wedding in 2008. During the period of insider trading,

Gutman and Tyndall regularly socialized with each other. They also telephoned, texted, and emailed each other frequently.

19. Gutman also knew that Tyndall worked in the securities industry.

20. Gutman provided Tyndall with material, nonpublic inside information about mergers and acquisitions of companies that J.P. Morgan was involved with. Tyndall traded for himself and his customers on the material nonpublic information that Gutman gave him.

21. Tyndall in turn passed that material nonpublic information concerning the Tipped Securities on to friends of his: Joseph Critelli, a registered representative at another New York broker-dealer, MP, JK, and AR. These persons traded on the inside information that Tyndall gave them.

22. Critelli grew up in Long Island, near Tyndall. Critelli was first registered with a FINRA member firm in 1995 and was last registered in January 2013. Tyndall and Critelli were registered at the same four New York area broker-dealers at the same time at various times from 1998 to 2004. During the course of the investigation into the insider trading at issue in this case, Critelli refused to testify and instead submitted a Letter of Acceptance, Waiver and Consent agreeing to a bar from the securities industry.

23. Tyndall was close friends with MP, who also grew up on Long Island. MP lived with Tyndall in New York City for a period sometime after 2005. MP was a day trader, and Tyndall and MP exchanged investment ideas and talked to each other daily. Tyndall tipped MP to the Tipped Securities. MP in turn tipped his father, sister, wife, and mother-in-law about the subject securities. MP and his family members together made \$474,316 by trading in Tipped Securities.

24. JK is another friend of Tyndall's. Tyndall and JK lived together in West Babylon, NY, from approximately 1999 to 2001. Tyndall tipped JK to Tipped Securities. JK made nearly \$1.1 million by trading mostly options in the Tipped Securities. JK also tipped his sister, JT, or used her account to trade in Tipped Securities; and he also tipped NA, a colleague from work, who also traded Tipped Securities. JT and NA made \$30,270 and \$191,710 in profits, respectively.

25. Tyndall also tipped nonpublic information that he got from Gutman to AR. Tyndall and AR are friends and grew up in the same town in Long Island. Tyndall was also friends with AR's sister. Using personal, family, and corporate accounts, AR traded at least four of the Tipped Securities and made \$168,492 from trading ahead of merger and acquisition news.

Meyers Associates' Insider Trading Policies

26. Meyers Associates maintained compliance procedures, applicable to its registered representatives, which provided standards of conduct prohibiting insider trading. The firm's procedures and rules prohibited the use of inside or material, nonpublic information to trade in securities, and prohibited recommending to customers the securities of an issuer while aware of material, non-public information about the issuer.

27. In November 2004 and in February 2007, Tyndall signed "Representative Agreements" with Meyers Associates in which he acknowledged receiving and reviewing the firm's written supervisory procedures. In the Representative Agreements, Tyndall also acknowledged that the firm prohibited transactions in any security for any account, including his own account, through the use of nonpublic information. Tyndall also signed Meyers Associates "Insider Trading Acknowledgments" in 2006 and 2007 in which he acknowledged that acting on inside information is unlawful.

28. Tyndall knew that Gutman worked in the securities industry. He knew, or was reckless in not knowing, that Gutman had a fiduciary duty to his employer and its clients to safeguard information and that information Gutman gave Tyndall concerning mergers and acquisitions about the Tipped Securities was material, nonpublic information.

Summary of Tyndall's Customers' Trading

29. Thirteen of Tyndall's customers at Meyers Associates invested in 14 of the 15 Tipped Securities. In one of the 15 Tipped Securities, only Tyndall invested.

30. During the Relevant Period, the 13 customers who purchased Tipped Securities together invested more than \$15.7 million in those securities and earned profits of more than \$1.7 million. None of Tyndall's customers lost money by trading the Tipped Securities.

31. In each instance, Tyndall solicited his customers to purchase the Tipped Securities. Each of the Tipped Securities was the subject of a potential merger or acquisition transaction in which J.P. Morgan was involved and was accordingly reviewed by the Conflicts Office.

32. Most of Tyndall's customers' purchases in Tipped Securities occurred between March and September 2007, in advance of the announcement of ten mergers or acquisitions.

33. From just seven public mergers or acquisitions announced between April 2 and May 29, 2007, Tyndall's customers made profits of over \$1.1 million by purchasing stock in advance of news.

34. In just one deal, Tyndall's customers made profits of \$464,169. Specifically, they profited from trades in SLM Corporation (commonly known as "Sallie Mae"), whose acquisition was publicly announced on April 13, 2007. Seven of Tyndall's customers bought 42,800 shares of Sallie Mae, investing nearly \$1.8 million, beginning on April 4, 2007.

35. One of Tyndall's customers made more nearly \$1.1 million by investing in 14 of the Tipped Securities. This customer made his largest single profit of \$340,129 when he bought 31,500 shares of Sallie Mae, from April 4 to 10, 2007, for which he paid more than \$1.3 million, in advance of a news announcement.

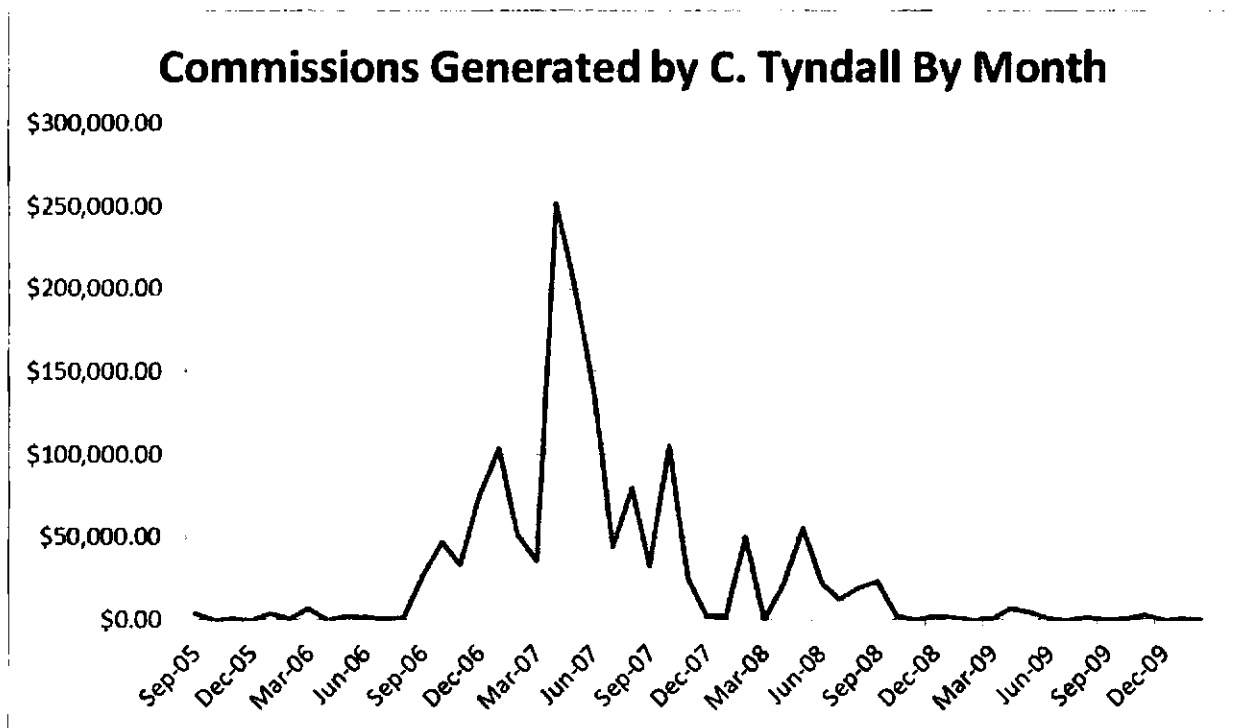
36. In contrast, Tyndall's customers at Meyers Associates lost nearly \$1.4 million in all other securities that they purchased and sold from late 2005 until he left the firm in February 2010.

37. In the 14 of the 15 Tipped Securities that Tyndall's customers traded, Tyndall generated a total of \$871,961 in commissions from his customers' purchases and sales.

38. In April 2007, Tyndall produced over \$250,000 in commission revenue for one month alone, and he produced just over \$200,000 the next month, May 2007.

39. In contrast, from September 2005 (the earliest period for which Tyndall's commission records are available) through August 2006, Tyndall generated a total of \$22,274 in commissions. From November 2007, when the insider trading activity ceased, through February 2010, when he left Meyers Associates, Tyndall generated a total of \$258,835 in commissions.

40. The chart below shows the spike in commissions earned by Tyndall during the Relevant Period.



41. After observing Tyndall's string of successes, colleagues of Tyndall's at Meyers Associates soon began copying his customers' trading by investing in the same securities that they did. At least three registered representatives at the firm invested personally in the Tipped Securities during the Relevant Period. The three registered representatives earned profits of nearly \$500,000 from their personal trading in Tipped Securities.

42. Two of the registered representatives recommended to more than 30 of their customers that they, too, trade in Tipped Securities during the Relevant Period. The customers made over \$1 million by trading ahead of news.

Tyndall's Customers' Trading Aroused Suspensions at Meyers Associates

43. By approximately early 2007, Tyndall's supervisors at Meyers Associates became concerned that he may have been engaged in insider trading because of the timing of his customers' trades. At least one supervisor noticed what he believed was a pattern of Tyndall's

customers making large purchases of securities for companies that soon thereafter were the subject of material news announcements concerning mergers or acquisitions. The supervisor observed that the customers were making considerable profits in a relatively short time. The supervisor believed that the customers' trading activity and their profits were not consistent with Tyndall's prior performance in recommending securities to his customers at the firm.

44. By early 2007, a Meyers Associates supervisor directed Tyndall's immediate supervisor to monitor Tyndall and his customers' trading activity. On multiple occasions, the firm asked Tyndall if he was in possession of material, nonpublic inside information about the Tipped Securities. In each instance, Tyndall falsely denied that he had such information.

45. Notwithstanding Tyndall's denials, the firm continued to suspect Tyndall of insider trading.

46. As a result of its suspicions, by early 2007, Meyers Associates prohibited Tyndall from personally trading the securities that he recommended to his customers.

47. The firm did not prevent Tyndall's customers from acting on his recommendations to purchase Tipped Securities.

48. The firm also instructed other registered representatives at Meyers Associates that they could not "copy" Tyndall's customers' trading activity unless they could demonstrate to the firm that their decision to invest was based on an independent evaluation of the security and not solely on the fact that Tyndall's customers were purchasing the security.

Summary of Tyndall's Tippees' Trading

Critelli, his Parents, and Customers' Trading in Tipped Securities

49. As noted, Tyndall tipped Critelli regarding the Tipped Securities. More than 40 of Critelli's customers invested in six of the Tipped Securities. Together they made more than \$1.9 million by investing ahead of news.

50. Critelli's customers' single largest profit was made by trading ahead of First Data Corporation's ("First Data") acquisition by Kohlberg Kravis Roberts & Co. On March 29 and 30, 2007, Critelli solicited 22 customers to buy more than 200,000 shares of First Data for a total acquisition cost of more than \$5.5 million. The next business day, April 2, 2007, First Data publicly announced that it was being acquired by Kohlberg Kravis. The 22 customers made more than \$800,000 in profits.

51. Critelli also traded personally in four of the Tipped Securities. He opened a personal account at another broker-dealer on September 20, 2006, without disclosing it to his employer firm and without telling the executing broker that he was registered. The same day that he opened the secret account, Critelli made his first purchase in a Tipped Security.

52. Using the same undisclosed account, between September 2006 and March 2007, Critelli personally invested in Realogy, Inc. (Realogy), Genesis HealthCare Corporation ("Genesis HealthCare"), and First Data ahead of public announcements. He made profits of approximately \$118,713 by trading ahead of these securities.

53. Critelli also tipped his parents, or used their accounts to trade Tipped Securities. Like Critelli, they, too, traded Realogy, Genesis HealthCare, and First Data, and they also invested in Checkfree Corporation ("Checkfree") in July 2007. Critelli's parents made \$38,262 from their four investments in Tipped Securities.

54. As at Meyers Associates, registered representatives at Critelli's member firm "copied" Critelli's customers' trading. Approximately ten registered representatives recommended to more than 140 customers purchases in the six Tipped Securities that Critelli's customers traded in. The approximately 140 customers made more than \$2 million in profits by trading ahead of news.

Tyndall's Friend JK traded Tipped Securities and Tipped his Sister and a Friend

55. Tyndall tipped his friend JK, who invested in 11 of the Tipped Securities and made profits of nearly \$1.1 million. JK bought call options in all 11 of his investments and also equities in three of the Tipped Securities during the Relevant Period.

56. JK made his single largest profit of \$370,535 by buying call options in Alliance Data Systems Corporation ("Alliance Data"), beginning April 23, 2007, in advance of a news announcement on May 17, 2007.

57. JK made \$241,521 in Sallie Mae, after buying 195 call options and 900 shares in the two days prior to the public announcement of its acquisition, on April 13, 2007.

58. JK also tipped his sister JT, or used her account to trade for himself. JT traded ahead of news announcements in four of the Tipped Securities, and made profits of \$30,270.

59. In addition to his sister, JK tipped NA, a colleague from work. Using a personal account, NA traded four of the Tipped Securities ahead of news announcements and made \$191,710.

Tyndall's Friend MP and his Family Traded Tipped Securities

60. Tyndall tipped his friend MP, who made \$159,079 by investing in 11 of the Tipped Securities from October 2006 to October 2007. His biggest single profit of \$40,120 was in Sallie Mae.

61. MP tipped four immediate family members – his father (JP), wife (YT), mother-in-law (CT), and sister (NP).

62. MP's father invested in 13 of the Tipped Securities. He made \$174,981 on those securities by purchasing them ahead of news. MP's sister NP invested in five of the Tipped Securities. In three instances, she bought call options. She made profits of \$38,296.

63. MP's wife, YT, invested in six of the Tipped Securities, in five cases by buying call options, and made \$78,535. His mother-in-law, CT, invested in two of the Tipped Securities by buying call options, and made profits of \$23,425.

64. In total, MP and his family made \$474,316 in profits during the Relevant Period.

Tyndall's Friend AR traded Tipped Securities

65. Tyndall tipped his friend AR, who invested in four of the Tipped Securities, purchasing both options and shares ahead of news announcements, from March to July 2007. AR used family and corporate accounts to trade. He made profits totaling \$151,692.

66. In addition to Tyndall's tippees trading discussed above, in nine instances Tyndall's tippees bought Tipped Securities but sold all of those Tipped Securities before the material events occurred.

The Material Events and the Trading

67. The following companies about which Gutman tipped Tyndall are discussed in chronological order based on the public announcement of the merger or acquisition material event.

North Fork Bancorporation

68. North Fork Bancorporation ("North Fork") was the holding company that owned North Fork Bank, a commercial bank with 365 branches in the New York City metropolitan area.

69. On March 4, 2006, the Conflicts Reporting System recorded that the firm had been retained to advise and finance Capital One Financial Corporation on a prospective acquisition of North Fork Bank.

70. Capital One announced on March 12, 2006, at 11:05 p.m., that North Fork had entered into an agreement in which Capital One would acquire North Fork in a stock and cash transaction valued at approximately \$14.6 billion. On March 13, 2006, the closing price of North Fork increased \$3.82, or 15 percent, above the previous day's closing price, to close at \$29.21.

71. On March 7, 2006, Tyndall purchased 50 call options in a personal account he had at Meyers Associates. He sold the options after the public announcement and made a profit of \$9,160.

72. Two of Tyndall's customers bought a total of 7,100 shares on March 9 and sold them after the news announcement for profits totaling \$27,395.

73. MP's father bought 400 shares of North Fork on March 7, 2006, and sold them after the news for a profit of \$1,731.

American Power Conversion Corporation

74. American Power Conversion Corporation ("American Power" or "APCC") provided power protection services and products for large and sophisticated computer systems against losses caused by downtime, data loss, and hardware damage, including loss of power or power surges and variations in ambient temperature.

75. On September 15, 2006, J.P. Morgan's Conflicts Reporting System recorded that the firm had been retained to advise Emerson Electric Company in its efforts to acquire American Power.

76. On October 30, 2006, at 1:45 a.m., American Power announced that it had executed a definitive merger agreement with Schneider Electric SA under which Schneider Electric would acquire all outstanding shares of American Power for \$31.00 per share in cash in a deal valued at approximately \$6 billion.

77. On October 30, 2006, the closing price of American Power increased \$6.25, or approximately 26.2 percent, above the previous day's closing price, to close at \$30.02.

78. Six of Tyndall's customers bought 18,450 shares of American Power between September 19 and 21, 2006, and sold them after the news for profits totaling \$87,687.

79. On September 27, 2006, Tyndall emailed a customer, "Please keep an eye on the following two companies: APCC, GHCI [Genesis HealthCare]. I feel both these companies have the potential to be acquired for approximately a 15-25% premium from there [sic] current levels."

80. Twenty-four of Critelli's customers bought 34,600 shares of American Power between September 19 and October 19, 2006. The customers sold 32,250 of the shares after the news for profits of \$197,397.

81. On September 20, 2006, Critelli opened a personal account at a brokerage firm other than his own. He did not disclose the account to his firm. That same day, using that new personal account, Critelli bought 130 call options in American Power. He sold all of the options before the news for a profit.

82. MP and a family member began buying shares of American Power on September 19 – the same day as Tyndall’s customers did. Together, they bought 700 shares. After the news announcement, they sold 500 of the shares for total profits of \$4,414.

@Road, Inc.

83. @Road, Inc. (“@Road”) integrated global positioning tracking technology using the Internet and wireless communications for companies whose business operations included managing and tracking fleets of vehicles.

84. On June 6, 2005, J.P. Morgan’s Conflicts Reporting System recorded that the firm had been retained to advise @Road in a potential acquisition. On December 4, 2006, another entry in the Conflicts Reporting System recorded that @Road had reached an agreement on the terms of an acquisition by Trimble Navigation Limited (“Trimble”) and that an announcement was expected on December 11, 2006.

85. On December 10, 2006, at 10:37 p.m., @Road announced that it had entered into an agreement with Trimble under which Trimble would acquire all of the outstanding shares of @Road for \$7.50 per share.

86. On December 11, 2006, the closing price of @Road increased \$0.53, or 7.9 percent, above the previous day’s closing price, to close at \$7.24.

87. On December 8, 2006, Tyndall emailed a customer to recommend @Road: “@Road Corporation (ARDI) trading at approximately \$6.70 per share (Short term buyout).”

88. On December 8, 2006, Tyndall bought 60 call options in a personal account. He sold 30 contracts at a loss on December 11, one day after the news announcement, and the other 30 contracts expired worthless.

89. MP and a family member bought a total of 4,200 shares of @Road on December 8, 2006. They sold them after the news for profits of \$2,360.

90. JK bought 23 call options on December 8, the same day that Tyndall bought his options.

Realogy, Inc.

91. Realogy Corporation (“Realogy”), a spin-off from Cendant Corporation, was in the business of real estate sales franchising and re-location services. It owned Coldwell Banker, Century21, and Sotheby’s International Realty, among other companies and brands.

92. On October 17, 2006, J.P. Morgan’s Conflicts Reporting System recorded that the firm had been retained to advise and finance Apollo Management, L.P.’s bid to acquire Realogy.

93. Two months later, on December 17, 2006, at 8:58 p.m., Realogy announced that it had entered into an agreement to be acquired by an affiliate of Apollo Management in a transaction valued at approximately \$9 billion. The next day, December 18, 2006, the closing price of Realogy increased \$4.90, or 19.2 percent, above the previous day’s closing price, to close at \$30.42.

94. On December 14, 2006, Tyndall emailed a prospective customer,

“I would appreciate it if you would follow these two companies I am recommending. I feel these companies are prime acquisition targets, and could receive a premium of approximately 20% (each). 1.) Realogy Corp. (H) on the NYSE trading at approximately \$26.00 per share (this will be short term) 2.) Commercial Metals Company (CMC) on the NYSE trading at approximately \$28.75 per share.”

95. Seven of Tyndall’s customers bought a total of 32,600 shares of Realogy from December 11 to 15, 2006. They sold all of their shares after the news announcement, and collectively made \$139,025 in profits.

96. In addition to those customers, Tyndall's parents bought 20 call options on December 11, 2006, and sold them after the news for a \$1,100 profit.

97. Twenty-seven of Critelli's customers bought a total of 65,800 shares of Realogy between December 12 and 14, 2006. The customers made profits totaling \$179,308 after selling all of the shares after the news announcement.

98. Using his undisclosed personal account, Critelli bought 4,000 shares of Realogy on December 11 and 12, 2006, and sold them all after the news, obtaining \$18,583 in profits.

99. Critelli's father bought 1,000 shares in an account he opened on November 21, 2006, at the same broker-dealer where Critelli two months earlier had opened his undisclosed account, and sold them after the news, obtaining \$4,910 in profits.

100. MP and his father bought 5,800 shares of Realogy from December 8 to 15, 2006. They sold 5,600 of the shares after the news announcement and obtained \$21,096 in profits.

101. JK bought 20 call options on December 14 and sold them on December 18 for a profit of \$7,510.

Genesis HealthCare Corporation

102. Genesis HealthCare Corporation ("Genesis HealthCare" or "GHCI") operated nursing, assisted living, and long-term care facilities, primarily in the eastern United States.

103. On August 8, 2006, J.P. Morgan's Conflicts Reporting System recorded that the firm had been retained as an advisor to Madison Dearborn Partners in its effort to acquire Genesis HealthCare. On September 13, 2006, an entry recorded that Madison Dearborn was expected to make an initial bid on September 18 or 19, 2006, and that Genesis HealthCare had formed a special committee and its Board of Directors was scheduled to meet on or about September 26, 2006.

104. On January 16, 2007, at 10:27 a.m., Genesis HealthCare announced that it had entered into an agreement to be acquired by a joint venture entered into between affiliates of Formation Capital, LLC, and JER Partners in an all-cash transaction, for \$63.00 per share.

105. On January 16, 2007, the closing price of Genesis HealthCare increased \$8.41, or approximately 15.9 percent, above the previous day's closing price, to close at \$61.26.

106. As noted in paragraph 79 above, Tyndall emailed a customer on September 27, 2006, referencing Genesis HealthCare and American Power as acquisition candidates.

107. Eight of Tyndall's customers bought 36,300 shares of Genesis HealthCare between September 14, 2006, and January 10, 2007. On the 25,100 shares sold after the announcement, the customers collectively made profits of \$228,033.

108. Thirty-five of Critelli's customers bought a total of 36,240 shares of Genesis HealthCare between September 18 and December 8, 2006. They sold 21,690 of those shares after the news announcement for total profits of \$226,595.

109. Using his undisclosed securities account, Critelli bought 3,000 shares of Genesis HealthCare beginning September 25, 2006. He sold all of the shares before the news announcement and made a profit of \$8,194. Critelli's parents bought 100 shares of Genesis HealthCare on November 16, 2006, and sold them after the news for a \$1,425 profit.

110. MP bought 5,444 shares of Genesis HealthCare between August 30, 2006 and January 8, 2007, and sold 1,200 of shares after the news announcement for profits of \$17,312. His father bought 3,622 shares between September 14, 2006 and January 8, 2007, and sold 1,300 shares after the news for profits of \$17,818.

111. MP's wife and his mother-in-law each bought 10 call options on December 20, 2006, and made \$5,225 each on the five options that they each sold after the news.

112. JK bought a total of 50 call options in Genesis HealthCare between December 20, 2006, and January 11, 2007. JK sold 10 of the options after the news announcement for a profit of \$5,100.

First Data Corporation

113. First Data Corporation ("First Data" or "FDC") processed commercial electronic payments for merchant transactions in credit and debit cards, including pre-paid credit and gift cards, and check acceptances services. It also operated company credit card loyalty programs.

114. On February 9, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm was asked to advise Master Card on a potential acquisition of First Data. On March 25, 2007, another entry was made in the system that the firm was retained to advise and finance Kohlberg Kravis on its possible acquisition of First Data. Another CRS entry on the same day stated that Kohlberg Kravis and First Data were targeting the signing of an agreement and an announcement for April 1, 2007.

115. On April 2, 2007, at 3:40 a.m., First Data announced that it had entered into an agreement with Kohlberg Kravis under which Kohlberg Kravis would acquire First Data for \$29 billion. The same day, the closing price of First Data increased \$5.55, or approximately 20.6 percent, above the previous day's closing price, to close at \$32.45.

116. Seven of Tyndall's customers first bought First Data shares on March 28, 2007, and bought more shares on March 29. Collectively, they bought a total of 47,000 shares of First Data in two days, and then sold all of their shares after the April 2, 2007, news announcement for profits of \$168,339.

117. Tyndall's parents bought 15 call options on March 28, 2007, and sold them after the news for profits of \$6,300.

118. Critelli's customers started buying First Data on March 29, 2007. In total, 22 customers bought 207,520 shares of First Data in just two days, March 29 and 30, 2007, and sold them all three days later, on April 2, the day of the news announcement, for profits of \$809,648.

119. Critelli bought 17,000 shares of First Data in his undisclosed securities account on March 29, 2007, and sold them after the news for a \$100,130 profit.

120. Critelli's father bought 3,900 shares of First Data, also on March 29, and made \$22,272 in profits. Using another, joint securities account, Critelli's parents bought 20 call options on March 29, 2007, and sold them for a \$9,000 profit after the news announcement.

121. MP and his father bought 2,700 and 3,100 shares, respectively, of First Data from March 28 to March 30, 2007, which they sold after the news for total profits of \$34,131.

122. MP's wife and mother-in-law together bought 85 call options in First Data on March 28 and 29, 2007. They sold them after news for profits of \$38,325. His sister bought 20 call options on March 28 and sold them after the news for a \$9,000 profit.

123. JK bought 272 call options in First Data on March 28, 29, and 30, and sold them after the news announcement for profits of \$103,260. NA, JK's co-worker, bought 25 call options on March 29 and sold them after the news announcement for a profit of \$10,325.

124. Using personal and corporate accounts, Tyndall's friend AR bought 155 call options in First Data between March 28 and 30, 2007. He also bought 3,000 shares of First Data on March 30. AR sold the options and shares after the news for combined profits of \$61,775.

SLM Corporation ("Sallie Mae")

125. SLM Corporation ("SLM"), or Sallie Mae, originates, services, and collects on primarily U.S. Government-guaranteed student loans.

126. On February 21, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm was asked to advise and finance J.C. Flowers & Co. in a potential acquisition of Sallie Mae and that J.P. Morgan might also invest in the deal. On March 5, 2007, another entry was made in CRS repeating that J.P. Morgan was asked to advise and finance J.C. Flowers in an acquisition of Sallie Mae. Another entry, on April 2, 2007, reported on the status of an asset-backed security financing that J.P. Morgan was involved with on behalf of Sallie Mae.

127. It was announced on April 13, 2007, at 4:27 a.m., that Sallie Mae was in talks to be bought out by a private equity firm in a deal valued at over \$20 billion. The same day, the closing price of Sallie Mae increased \$8.51, or 18.1 percent, above the previous day's closing price, to close at \$55.31.

128. Seven of Tyndall's customers bought a total of 42,800 shares of Sallie Mae beginning on April 4, 2007. They sold their shares after the news announcement for profits of \$464,169.

129. MP and his father bought 2,800 and 2,500 shares, respectively, of Sallie Mae from April 3 to April 12, 2007, and sold them after the news announcement for total profits of \$74,525. MP's sister bought 150 shares of Sallie Mae on April 11, 2007, and sold them for a profit of \$2,100. MP's wife bought 20 call options and 300 shares of Sallie Mae on April 11, 2007, and sold them after the news for profits of \$25,260.

130. JK bought 900 shares of Sallie Mae on April 11 and 195 call options on April 11 and 12, 2007. He sold the shares for profits of \$12,296 and the options for profits of \$229,225 after the news announcement.

131. JK's sister bought three call options on April 11 and sold them for profits of \$2,985. JK's co-worker, NA, bought 45 call options on April 11 on which he made profits of \$53,475 after the news.

Florida East Coast Industries

132. Florida East Coast Industries, Inc. ("Florida East Coast") operated a freight railroad and a commercial and industrial real estate business in Florida.

133. On March 2, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm had been retained to help finance Cerberus Capital Management, L.P. in connection with its intent to acquire Florida East Coast. Five days later, on March 7, 2007, another entry in CRS stated that the firm would provide financing in The Carlyle Group's possible acquisition of Florida East Coast.

134. On May 8, 2007, at 9:37 a.m., Florida East Coast announced that it had entered into a merger agreement with private equity funds managed by affiliates of Fortress Investment Group, LLC, under which Fortress would acquire the company in a transaction valued at \$3.5 billion. The same day, the closing price of Florida East Coast increased \$10.84, or 14.6 percent, above the previous day's closing price, to close at \$84.99.

135. One of Tyndall's customers bought 3,000 shares of Florida East Coast on April 27, 2007, which he sold after the news announcement for profits of \$18,849.

136. JK bought a total of 220 call options in Florida East Coast from April 30 to May 7, 2007. JK made \$28,700 on the 120 options that he sold after the news.

Bausch & Lomb Incorporated

137. Bausch & Lomb Incorporated ("Bausch & Lomb") is a leading supplier of eye products, including contact lenses and lens care products, with operations throughout the world.

138. On April 4, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm had been retained to advise and finance Warburg Pincus LLC, a private equity firm, in its acquisition of Bausch & Lomb.

139. On May 16, 2007, at 8:09 a.m., Bausch & Lomb announced that it had entered into a merger agreement with affiliates of Warburg Pincus in a \$4.5 billion transaction. The same day, the closing price of Bausch & Lomb increased \$5.97, or 9.7 percent, above the previous day's closing price, to close at \$67.46.

140. Two of Tyndall's customers bought a total of 9,000 shares of Bausch & Lomb on April 27, 2007, and sold a total of 6,000 shares after the news for profits of \$30,420.

141. JP bought 1,700 shares of Bausch & Lomb between April 17 and May 1, 2007. He sold 100 shares after the news for a small profit.

142. JK bought a total of 300 call options on April 24 and April 30 and sold 170 of the contracts after the news for profits of \$43,320. His sister bought 10 call options on April 24 and sold them after the news for a small profit. JK's co-worker, NA, bought 495 call options from April 24 to 26, and sold 218 of the contracts after the news for profits of \$20,830.

143. AR bought 70 call options on April 24, 2007, and sold them after the news for \$5,900 in profits.

Alliance Data Systems Corporation

144. Alliance Data Systems Corporation ("Alliance Data" or "ADS") was a leading provider of loyalty and marketing programs, such as private label credit cards and company coalition loyalty programs.

145. On April 13, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm had been asked by Providence Equity Partners LLC to finance a bid for Alliance Data. On

April 19, 2007, another CRS entry recorded that the firm would finance Bain Capital and other investment firms to acquire Alliance Data. The next day, on April 20, 2007, another CRS entry recorded that J.P. Morgan was involved in financing Providence Equity's acquisition of Alliance Data. Yet another entry, on April 26, 2007, recorded that the firm would finance The Blackstone Group L.P.'s acquisition of Alliance Data.

146. On May 17, 2007, at 8:51 a.m., Alliance Data announced that it had entered into an agreement to be acquired by Blackstone Capital Partners V, L.P., an affiliate of The Blackstone Group, in a transaction valued at \$7.8 billion. The same day, the closing price of Alliance Data increased \$15.54, or 24.6 percent, above the previous day's closing price, to close at \$78.50.

147. Five of Tyndall's customers bought a total of 24,800 shares of Alliance Data on April 23 and 27, 2007. They sold all of the shares after the news announcement for profits of \$219,630.

148. MP bought a total of 5,200 shares of Alliance Data from April 23 to May 16, 2007. He sold 1,500 shares after the news for profits of \$27,935. His father bought 1,685 shares of Alliance Data, from April 23 to May 11, 2007, and sold them all after the news for profits of \$29,331.

149. MP's wife and sister each bought 15 call options, on April 25 and 27, 2007, and sold them after the news for profits of \$19,425 and \$19,350, respectively.

150. JK bought 350 call options from April 23 to May 16, 2007 and sold all of them after the news for total profits of \$370,535. JK's co-worker, NA, bought 75 call options on April 25, 2007, and sold them all after the news for profits of \$72,500.

Cytec Corporation

151. Cytec Corporation ("Cytec" or "CYTC") designed, developed and manufactured clinical products focusing on women's health, including cervical and breast cancer screening and risk assessment.

152. On May 7, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm was participating in a second fairness opinion on behalf of Hologic Corporation in its acquisition of Cytec. On May 9, 2007, another entry recorded that J.P. Morgan was asked to provide a fairness opinion to Cytec concerning its sale to Hologic.

153. Cytec announced on Sunday, May 20, 2007, at 3:03 p.m., that it had signed a merger agreement with Hologic under which Cytec shareholders would receive .52 shares of Hologic stock and \$16.50 for each Cytec share.

154. On May 21, 2007, the closing price of Cytec was \$43.00 per share, an increase of \$7.95, or approximately 22 percent, from the prior business day's closing price.

155. Nine of Tyndall's customers bought a total of 29,950 shares of Cytec from May 9 to May 16, 2007, and sold them after news of the merger for total profits of \$174,705.

156. On May 11, 2007, Tyndall's parents bought 15 call options in Cytec and sold them after the news for a profit of \$10,200.

157. On May 11, 2007, Tyndall emailed one of his customers, "I am extremely confident [sic] that we will hear some news from Cytec Corp by early next week." He also emailed four other clients from May 9 to May 14 recommending investments in Cytec.

158. On May 16, he emailed an office assistant of one of his most active customers about the customer's purchase of a total of 17,500 shares of Cytec a few days earlier, for which

he paid more than \$600,000, saying "I think he will be very happy with the end result." The customer made profits of \$99,740 by trading ahead of news in Cytac.

159. On Friday, May 18, 2007, Tyndall emailed a customer who wanted to sell the 550 shares of Cytac that he had bought on May 11, 2007, urging him to wait until May 21, 2007: "If there is no news by then, I will sell your position Monday morning [May 21] and wire the funds back to your bank account immediately after the liquidation." The customer waited to sell his shares until after the news in Cytac and made \$3,535 in profits.

160. MP bought a total of 1,700 shares of Cytac on May 10 and 18, 2007, and sold them for profits of \$19,140. His father bought 3,000 shares of Cytac on May 9, 2007, and sold them after the news for \$31,977 in profits. MP's wife bought 10 call options on May 10 and sold them after the news for a \$6,850 profit. MP's sister bought 10 call options on May 11 and sold them after the news for a \$7,200 profit.

161. JK bought 1,500 shares of Cytac on May 11 and 17 and 413 call options from May 10 to May 18, 2007. He sold all of the Cytac shares after the news announcement for a \$12,500 profit and 353 of the call options for a \$206,995 profit. JK's sister, JT, bought a total of 50 call options on May 10 and 17. JT exercised five of the options before the news and sold the 500 shares she acquired for a \$4,060 profit. She sold the remaining 45 options after the news for a profit of \$21,075. NA, JK's co-worker, bought 55 call options on May 17 and sold them after the news announcement for profits of \$34,580.

162. Using personal and corporate accounts, AR bought 5,000 shares of Cytac on May 10, 2007, and 160 call options from May 10 and 18, 2007. He made total profits of \$96,832 on the shares and the 80 call options that he sold after the news.

Avaya, Inc.

163. Avaya, Inc. ("Avaya") provides telephones and other business communications systems, including telephone contacts and call centers, networking hardware, and video hardware and software products.

164. On March 5, 2007, J.P. Morgan's Conflict Reporting System recorded that it had been asked for guidance by Golden Gate Capital in its possible acquisition of Avaya. Another entry, on March 9, 2007, recorded that the firm was asked to advise Nortel Networks Corporation in a possible acquisition of Avaya. A month later, on April 15, 2007, a CRS entry recorded that J.P. Morgan had been asked by Avaya to advise it on its sale. An entry on May 23, 2007, reported on a request to finance Silver Lake Partners LLC's potential acquisition of Avaya.

165. On May 29, 2007, at 2:36 a.m., Avaya announced that it was in negotiations to sell a part or all of the company. The same day, the closing price of Avaya increased \$2.08, or 15.2 percent, above the previous day's closing price, to close at \$15.76.

166. Five of Tyndall's customers bought a total of 27,000 shares of Avaya from May 18 to 25, 2007, and made a total of \$72,565 in profits when they sold the shares after the news.

167. MP bought 4,000 shares of Avaya from May 21 to 24, 2007. He earned profits of \$7,860 on the 3,000 shares that he sold after the news. His father bought 200 shares of Avaya on May 25, 2007, and sold them after the news for a small profit. MP's wife, YT, bought 500 shares of Avaya on May 22, 2007, and sold them after the news for a profit of \$1,650.

BCE, Inc.

168. BCE, Inc. ("BCE") is Canada's largest telecommunications and media company, and is the holding company for Bell Canada.

169. On April 13, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm been approached by Telus Communications to advise it on a potential acquisition or leveraged buyout of BCE.

170. On June 21, 2007, at 12:42 a.m., BCE and Telus confirmed that the two companies were in merger discussions. That same day, the closing price of BCE increased \$1.16, or 3.1 percent, above the previous day's closing price, to close at \$37.88.

171. On June 30, 2007, at 9:03 a.m., BCE announced that it had entered into an agreement to be acquired by an investor group led by Teachers' Private Capital in a deal valued at \$48.5 billion. On June 30, 2007, the closing price of BCE increased \$1.63, or 4.2 percent, above the previous day's closing price, to close at \$39.43.

172. Four of Tyndall's customers bought a total of 36,250 shares of BCE between June 6 and June 19, 2007. They made a total of \$9,334 in profits on the 28,750 shares sold after the news announcements.

Checkfree Corporation

173. Checkfree Corporation ("Checkfree" or "CKFR") developed and marketed software used by financial institutions to electronically process check and Automated Clearing House transactions.

174. On May 23, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm was retained to advise Fidelity National Information Services, Inc. ("Fidelity National") on a possible acquisition of Fiserv, Inc. On June 21, 2007, the Conflicts Reporting System recorded that the firm was retained to advise Fidelity National on possibly acquiring Checkfree.

175. On August 2, 2007, at 8:30 a.m., Checkfree announced that it had entered into an agreement with Fiserv under which Fiserv would acquire Checkfree in an all-cash transaction

valued at approximately \$4.4 billion. On August 2, 2007, the closing price of Checkfree increased \$8.57, or 23.2 percent, above the previous day's closing price, to close at \$45.40.

176. Five of Tyndall's customers bought a total of 29,000 shares of Checkfree from June 28 to July 9, 2007. They sold their shares after the news announcement for profits of \$69,327.

177. Tyndall's parents bought 25 call options on July 2, 2007, and sold 10 of the call options after the news announcement for a small profit.

178. Seventeen of Critelli's customers bought a total of 102,950 shares of Checkfree between July 16 and July 31, 2007. Of the total, 99,950 shares were sold after the news announcement for \$378,518 in profits.

179. Critelli's parents bought 100 shares of Checkfree on July 17, 2007, and sold them after the news for a small profit.

180. MP bought 2,100 shares of Checkfree between June 26 and August 1, 2007, and sold 1,100 of the shares after the news for profits of \$8,701. His father bought 2,000 shares of Checkfree between July 23 and 25, 2007, and sold all of them after the news for profits of \$15,868.

181. JK bought a total of 1,500 shares of Checkfree on June 26 and June 29, 2007, and sold them all after the news for a profit of \$8,317. He also bought 449 call options between June 26 and July 24 and sold 421 of the options after the news for profits of \$48,795. JK's sister bought 20 call options on July 19 and sold them after the news for a profit of \$1,300.

182. AR bought 500 shares of Checkfree on July 24, 2007, and sold them after the news for a \$3,985 profit.

Commerce Bancorp, Inc.

183. Commerce Bancorp, Inc. ("Commerce Bancorp") was the holding company for Commerce Bank, which operated more than 400 branches in New Jersey and Pennsylvania.

184. On July 27, 2007, J.P. Morgan's Conflicts Reporting System recorded that the firm had been asked to advise TD Bank in an acquisition of Commerce Bancorp.

185. On October 2, 2007, at 6:55 a.m., Commerce Bancorp announced that it had entered into an agreement under which TD Bank would acquire Commerce Bancorp in an \$8.5 billion transaction.

186. On October 2, 2007, Commerce Bancorp's closing price decreased \$0.18, or 0.5 percent, below the previous day's closing price, to close at \$39.44. However, in the month preceding the announcement of the transaction, the closing price of Commerce Bancorp had increased more than \$2.00 per share, from \$37.57 to \$39.69.

187. On September 27 and 28, 2007, Tyndall emailed a customer recommending Commerce Bancorp, in which he said, "there is some news of a possible acquisition [of CBH] from Citigroup or JPMorgan."

188. Four of Tyndall's customers bought a total of 29,650 shares of Commerce Bancorp between August 10 and October 1, 2007. The customers made a small profit on the 19,150 shares that they sold after the news announcement.

189. Nineteen of Critelli's customers bought a total of 72,400 shares of Commerce Bancorp between September 6 and October 1, 2007. They sold all of the shares after the news announcement for profits of \$121,181.

190. MP bought 8,500 shares of Commerce Bancorp between August 9 and 23, 2007. He sold 1,800 shares after the news for a profit of \$6,748. MP's father bought 3,900 shares from

August 9 to September 25 and sold 2,500 after the news for \$11,896 in profits. MP's sister bought 100 shares on August 15 and sold them after the news for a small profit.

191. Between August 8 and October 1, 2007, JK purchased 2,288 call options in Commerce Bancorp. He lost money on the contracts that he sold after the news announcement.

Gutman Tipped Tyndall to Other Deals for which no Material Event Occurred

192. During the Relevant Period, Gutman tipped Tyndall to six other potential mergers or acquisitions that were reviewed by J.P. Morgan's Conflicts Office but which did not result in a merger or acquisition.

193. The potential mergers or acquisitions involved Exelon Corporation, IPSCO, Inc., STMicroelectronics, N.V., Universal Electronics, Inc., Nu Skin Enterprises, Inc., and Masco Corporation. Tyndall's customers invested in each of the securities.

Gutman Failed to Identify Tyndall in Response to a Query Regarding Suspicious Trading

194. In September 2007, FINRA sent J.P. Morgan an inquiry letter in connection with suspicious trading ahead of the Cytac public announcement on May 20, 2007. FINRA provided to J.P. Morgan a list of persons who traded in advance of the Cytac merger announcement and requested that J.P. Morgan ask people who worked on the transaction at the firm whether they knew any of the listed persons.

195. J.P. Morgan circulated the inquiry letter and the list to persons in the Conflicts Office, including Gutman. The list included Tyndall's name.

196. Gutman reviewed the list, but falsely responded to the inquiry letter by telling his firm that he did not know any of the listed individuals.

197. A colleague of Gutman's in the Conflicts Office, who had been introduced to Tyndall by Gutman and who knew that Gutman and Tyndall were friends, also failed to identify Tyndall to J.P. Morgan.

198. As a consequence, J.P. Morgan did not tell FINRA that two of its employees in its Conflicts Office knew Tyndall.

199. One year later, on September 3, 2008, FINRA conducted an on-the-record interview of Tyndall. Shortly thereafter, because of Tyndall's testimony about his relationship with Gutman, FINRA re-sent the Cytac inquiry letter and list of names to J.P. Morgan. FINRA specifically asked the firm to show the list to Gutman and his Conflicts Office colleague.

200. On this occasion, Gutman admitted to J.P. Morgan that he knew Tyndall.

201. Separately, Gutman's colleague in the Conflicts Office also admitted to J.P. Morgan that he knew Tyndall.

202. J.P. Morgan then informed FINRA that Gutman and his Conflicts Office colleague had identified Tyndall as a friend.

CAUSE ONE

Insider Trading

(Violations of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, and NASD Rules 2120 and 2110)

203. The Department re-alleges and incorporates by reference paragraphs one through 202 above.

204. Between March 2006 and October 2007, as an employee in J.P. Morgan's Conflicts Office, Gutman had access to and became aware of confidential and material information concerning each of the 15 companies referenced above before the public dissemination of news.

205. Gutman provided Tyndall with this confidential, nonpublic information about each of the companies referenced above. Tyndall traded on the information and tipped 13 customers and his parents. Tyndall also passed on the information to friends who also traded on the nonpublic information and who tipped others to trade on the information.

206. The inside information that Gutman provided to Tyndall was material.

207. As described above, Respondents engaged in an illegal insider trading scheme in which each possessed and used material, nonpublic information which they knew, should have known, or were reckless in not knowing was obtained in breach of a duty of trust or confidence, and tipped others, who used that material, nonpublic information to purchase or sell securities.

208. By engaging in the conduct described above, Respondents directly or indirectly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes, or artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon any person, including purchasers of the securities.

209. NASD Rule 2120 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

210. Respondents knowingly, intentionally, or recklessly engaged in the above-mentioned devices, schemes, and artifices to defraud, made untrue statements of material facts, and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. By engaging in such conduct, Respondents acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a reckless disregard for the truth.

211. By reason of the foregoing, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and violated NASD Rules 2120 and 2110.

CAUSE TWO
(Pleaded in the Alternative to Cause One)

Standards of Commercial Honor and Just and Equitable Principles of Trade
(Violations of NASD Rule 2110)

212. The Department re-alleges and incorporates by reference paragraphs one through 211 above.

213. By engaging in the misconduct described above, Respondents made, or caused to be made, material misstatements or omitted material facts in connection with the purchase or sale of securities, in particular, the material, nonpublic information about the Tipped Securities.

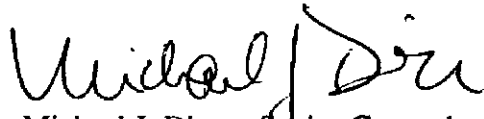
214. By their actions, Respondents failed to comply with their obligations to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

Relief Requested

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents David Gutman and Christopher Tyndall committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondents willfully violated Section 10(b) of the Exchange Act.

Respectfully submitted,



Michael J. Dixon, Senior Counsel
Jeffrey P. Bloom, Senior Special Counsel
Carolyn J. Craig, Director
Department of Enforcement
15200 Omega Drive
Rockville, Maryland 20850
Telephone: (301) 258-8522
Fax: (202) 303-3980

May 17, 2013

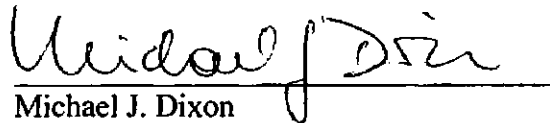
Copies were also served by first-class mail to:

Susan Brune, Esquire
Brune & Richard LLP
One Battery Park Plaza
New York, NY 10004
Counsel to David Gutman

George F. Meierhofer, Esquire
Kaufman Dolowich & Voluck LLP
100 William Street
Suite 215
New York, New York 10038
Counsel to Christopher Tyndall

May 17, 2013

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael J. Dixon", is written over a horizontal line.

Michael J. Dixon
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850
(301) 258-8522
Fax: 202-303-3980
michael.dixon@finra.org