



*United States Attorney
Southern District of New York*

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**TWO FORMER HIGH-TECHNOLOGY COMPANY EXECUTIVES CHARGED
IN MANHATTAN FEDERAL COURT IN MASSIVE
ACCOUNTING AND SECURITIES FRAUD SCHEME**

*Two Other Former Executives Pled Guilty To Related Charges For Their
Roles In The Fraud*

PREET BHARARA, the United States Attorney for the Southern District of New York, and RONALD J. VERROCHIO, the Inspector-in-Charge of the New York Office of the United States Postal Inspection Service ("USPIS"), announced today that LOUIS TOMASETTA, the founder and former CEO of Vitesse Semiconductor Corp., a publicly traded, high-technology company, and EUGENE HOVANEK, the former Executive Vice-President of Vitesse, were charged in an indictment with securities fraud, making false entries in the books and records of a corporation, making false filings with the Securities and Exchange Commission ("SEC"), and conspiracy for their roles in a scheme to manipulate Vitesse's reported financial statements. TOMASETTA was also charged with making a false certification of a financial report and making false statements to auditors. TOMASETTA, 62, of Ojai, California, and EUGENE HOVANEK, 60, of Westlake Village, California, are expected to appear in Manhattan federal court this afternoon before U.S. Magistrate Judge MICHAEL H. DOLINGER.

On December 3, 2010, YATIN MODY, 47, of Westlake Village, California, the former CFO of Vitesse, pled guilty to an Information charging him with securities fraud, making false entries in the financial records of a corporation, and conspiracy before U.S. District Judge JOHN G. KOELTL in Manhattan federal court, pursuant to a cooperation agreement with the Government.

On November 30, 2010, NICOLE KAPLAN, 39, of Agoura Hills, California, the former Director of Accounting at Vitesse, pled guilty to an Information charging her with securities fraud, making false entries in the financial records of a corporation, and conspiracy before U.S. District Judge GEORGE B. DANIELS in Manhattan federal court, pursuant to a cooperation agreement with the Government.

Manhattan U.S. Attorney PREET BHARARA said:

"As this case demonstrates, we will use all of our resources to ferret out fraud in the board rooms and the executive suites. We will prosecute corporate CEOs, CFOs, and other high-level executives who use their positions of power to deceive investors, auditors, and securities regulators. Louis Tomasetta and Eugene Hovanec will now face prosecution for their alleged roles in the fraud as charged in the indictment. We are committed to continuing our work with our law enforcement partners to uncover accounting and securities fraud and to punishing those responsible."

USPIS Inspector-in-Charge RONALD J. VERROCHIO said:

"Investors need to trust the securities they invest their savings in are based on truth and not fraudulent information. Working with the U.S. Attorney, the Postal Inspectors will identify and prosecute those who opt to lie and cheat investors of their savings."

According to the Indictment unsealed today in Manhattan federal court, and the Informations previously filed against MODY and KAPLAN:

Vitesse, headquartered in Camarillo, California, was a producer of high performance integrated circuits for use primarily by systems manufacturers in the storage and communications industries. Vitesse's common stock was registered with the SEC and traded on the NASDAQ national market until it was delisted on June 28, 2006.

From 2001 through May 2006, TOMASETTA, HOVANEC, MODY, and KAPLAN engaged in an illegal scheme to deceive Vitesse's auditors, investors, and others concerning Vitesse's true financial condition and the results of its business operations. The fraudulent scheme involved improper recognition of revenue, failure to properly account for returned product, manipulation of accounts receivable, and backdated stock options.

During that time period, TOMASETTA, HOVANEC, MODY, and KAPLAN knew that Vitesse was not going to meet its revenue or earnings targets, and devised and executed a scheme to falsely

inflate Vitesse's revenue. For example, as the defendants well knew, Vitesse improperly recognized revenue on shipments of product to a certain distributor (the "Distributor") when it was improper and fraudulent to do so because Vitesse had an undisclosed agreement that the Distributor could return large portions of the product shipped and Vitesse did not make adequate provision in its books and records to account for those returns at the time the revenue was recognized, as it was required to do.

Vitesse recorded approximately \$40.1 million in revenue from its first transaction with the Distributor in its financial statements for the fiscal quarter and year ending September 30, 2001, which represented more than 10.4 percent of Vitesse's 2001 annual revenue and nearly 108 percent of Vitesse's revenue for the fourth quarter. Although Vitesse represented in its SEC filings from 2002 through 2005 that it did not record revenue on sales to the Distributor because of the rights of return, from December 2003 through December 2005, Vitesse recognized revenue on large quarter-end transactions with the Distributor in amounts ranging from \$7.6 million to \$22.5 million. These transactions ranged from 15 percent to 41 percent of Vitesse's reported quarterly revenues during that period.

In addition, TOMASETTA and HOVANEC backdated numerous stock options granted to Vitesse employees from 2001 through 2004. By backdating the Vitesse stock options, TOMASETTA and HOVANEC chose an exercise price for the options that was less than the fair market value of the stock on the date that the Vitesse's Compensation Committee granted the options. They then falsified public filings with the SEC. They also filed false and misleading annual and quarterly reports, including its report for the fiscal year that ended on September 30, 2005, and its report for the fiscal quarter that ended on February 8, 2006.

On April 18, 2006, Vitesse announced that its Board of Directors had appointed a Special Committee of independent directors to conduct an internal investigation relating to past stock option grants, the timing of such grants and related accounting and documentation, and that TOMASETTA, HOVANEC, and MODY had been placed on administrative leave. On April 26, 2006, Vitesse announced that the scope of the internal investigation had been expanded to include issues relating to Vitesse's revenue and accounts receivable, and that its previously reported financial statements for the three months ended December 31, 2005, and the three years ended September 30, 2005, should not be relied upon. After the April 26, 2006, announcement, Vitesse's stock price dropped by approximately 28 percent and its market capitalization (based on 218,858,254 shares outstanding) fell by approximately \$151 million.

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In addition to the charges outlined in the attached chart, the Indictment seeks forfeiture of the proceeds obtained by the defendants for their commission of the offenses.

Pursuant to their guilty pleas, MODY and KAPLAN are each facing a maximum term of 45 years in prison, a fine of \$5 million or twice the gross pecuniary gain or loss on each count, and a maximum term of supervised release of three years.

Mr. BHARARA praised the investigative work of the USPIS. He also thanked the SEC for its assistance in this matter.

This case was brought in coordination with President BARACK OBAMA's Financial Fraud Enforcement Task Force, on which Mr. BHARARA serves as a Co-Chair of the Securities and Commodities Fraud Working Group. President OBAMA established the interagency Financial Fraud Enforcement Task Force to wage an aggressive, coordinated, and proactive effort to investigate and prosecute financial crimes. The task force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general, and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes.

This case is being handled by the Office's Securities and Commodities Frauds Task Force. Assistant U.S. Attorneys JOHN J. O'DONNELL and PABLO QUIÑONES are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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The Indictment charges TOMASETTA and HOVANEC with the following crimes that carry the following possible maximum penalties:

Count	Charge	Maximum Prison Sentence	Maximum Fine	Maximum Supervised Release
1	Conspiracy to commit securities fraud, to make false statements in SEC filings, to make false statements to auditors, and to make false entries in corporate books and records	5 years	\$250,000 or twice the gross pecuniary gain or loss	3 years
2	Securities Fraud	20 years	\$5 million or twice the gross pecuniary gain or loss	3 years
3	False entries in corporate books and records	20 years	\$5 million or twice the gross pecuniary gain or loss	3 years
4, 5	False SEC Filings	20 years on each count	\$5 million or twice the gross pecuniary gain or loss	3 years
6	False Certification Of A Financial Report (Tomasetta only)	20 years	\$5 million or twice the gross pecuniary gain or loss	3 years
7	False Statements to Auditors (Tomasetta only)	20 years	\$5 million or twice the gross pecuniary gain or loss	3 years

