

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- : INFORMATION

TAI NGUYEN, : 12 Cr.

Defendant. :

- - - - - x

COUNT ONE

(Conspiracy to Commit Wire Fraud and Securities Fraud)

The United States Attorney charges:

Relevant Entities

1. At all times relevant to this Information, Insight Research, LLC ("Insight Research") was an investment research firm that operated in northern California and Oregon, among other places. Insight Research purported to provide investment research services to its clients. These clients were money managers and hedge funds throughout the United States, including in New York, New York, whose principal purpose was to purchase and sell securities for profit. Insight Research primarily specialized in providing investment research about publicly-traded technology companies. In exchange for its research services, Insight Research received consulting fees from its clients, either through direct payments or indirectly through soft dollar payments, which are payments directed to Insight Research through its clients' trading activity.

2. At all times relevant to this Information, an expert networking firm in Mountain View, California (the "Firm") operated as a private company that paid employees at publicly traded companies and other individuals ("Firm Consultants") to provide information to money managers, including hedge funds. These money managers' principal purpose was to purchase and sell securities for profit.

3. At all times relevant to this Information, Abaxis Inc. ("Abaxis") was a biotechnology company headquartered in Union City, California, whose shares traded on the Nasdaq Stock Market (ticker symbol: ABAX). At all times relevant to this Information, Abaxis's policies prohibited the unauthorized disclosure of Abaxis's confidential information.

#### **Relevant Individuals**

4. At all times relevant to this Information, TAI NGUYEN, the defendant, was the President and sole employee of Insight Research. In that capacity, NGUYEN conducted all research for Insight Research and was the principal interface with Insight Research's clients. In addition to operating Insight Research, NGUYEN also was a paid consultant for the Firm.

5. At all times relevant to this Information, an individual not named herein was employed in the Finance Department of Abaxis (the "Abaxis Insider"). TAI NGUYEN, the defendant, was the brother of the Abaxis Insider. At all relevant times, the

Abaxis Insider owed fiduciary and other duties of trust and confidence to Abaxis and its shareholders, requiring that, among other things, the Abaxis Insider maintain the confidentiality of all material nonpublic information entrusted to the Abaxis Insider, including nonpublic financial results of the company.

6. At all times relevant to this Information, Noah Freeman was employed in the hedge fund industry. At certain times relevant to this Information, Freeman was employed as a research analyst at a hedge fund based in Boston, Massachusetts ("Hedge Fund A"). Hedge Fund A was a client of Insight Research.

7. At all times relevant to this Information, Samir Barai worked as a portfolio manager in the hedge fund industry, including at two separate hedge funds located in New York, New York ("Hedge Fund B" and "Hedge Fund C"). Barai caused Hedge Fund B and Hedge Fund C to pay TAI NGUYEN, the defendant, through the Firm and also directly through invoices from Insight Research.

#### The Wire Fraud and Insider Trading Scheme

8. From at least in or about 2006, through in or about mid-2009, TAI NGUYEN, the defendant, Noah Freeman, Samir Barai, and others known and unknown, participated in a scheme to defraud by executing securities transactions based on material nonpublic information regarding Abaxis's quarterly financial results (the "Abaxis Inside Information") before such results were publicly announced by Abaxis. Specifically, NGUYEN obtained from the

Abaxis Insider detailed information about Abaxis's anticipated revenues, earnings, gross margins, and other financial results prior to Abaxis's quarterly announcement. The Abaxis Insider provided NGUYEN such information in violation of the duties of trust and confidence that the Abaxis Insider owed to Abaxis and its shareholders.

9. After obtaining the Inside Information from the Abaxis Insider, on numerous occasions between 2006 and 2009, TAI NGUYEN, the defendant, provided the Abaxis Inside Information to Noah Freeman, Samir Barai, and others known and unknown at Hedge Fund A, Hedge Fund B, and Hedge Fund C. NGUYEN explicitly informed Freeman, Barai and other co-conspirators that the information he provided regarding Abaxis was from a relative employed at Abaxis. As NGUYEN well knew, the Abaxis Inside Information that he provided to his co-conspirators was obtained for the purpose of executing and causing others to execute securities transactions based, in whole or in part, on the Abaxis Inside Information.

10. Based on the Abaxis Inside Information provided by TAI NGUYEN, the defendant, both Hedge Fund A and Hedge Fund C executed securities transactions in Abaxis stock prior to the public announcement of Abaxis's quarterly financial results. As a result of the trading in Abaxis stock based on tips from NGUYEN, including the Abaxis Inside Information, Hedge Fund A earned more

than \$4.5 million between July 2006 and May 2009, while Hedge Fund C earned over \$1.7 million between July 2008 and September 2009.

11. In addition, on numerous occasions between 2006 and 2009, TAI NGUYEN, the defendant, traded Abaxis stock in his personal brokerage account after obtaining the Abaxis Inside Information from the Abaxis Insider. As a result of NGUYEN's own trading activity, NGUYEN earned over \$147,000 between January 2006 and August 2009.

12. In exchange for the Abaxis Inside Information, Hedge Fund A, Hedge Fund B, and Hedge Fund C paid Insight Research and/or TAI NGUYEN, the defendant, consulting fees of several thousand dollars per month. Indeed, at various times, Insight Research earned consulting fees of more than \$15,000 a month from just one of these hedge fund clients.

#### The Conspiracy

13. From in or about 2006 through in or about mid-2009, in the Southern District of New York and elsewhere, TAI NGUYEN, the defendant, Noah Freeman, Samir Barai, 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: (1) to commit wire fraud, in violation of Title 18, United States Code, Section 1343; and (2) to commit 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.

Objects of the Conspiracy

14. It was a part and object of the conspiracy that TAI NGUYEN, the defendant, Noah Freeman, Samir Barai, and others known and unknown, 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 and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, all in violation of Title 18, United States Code, Section 1343.

15. It was further a part and an object of the conspiracy that TAI NGUYEN, the defendant, Noah Freeman, Samir Barai, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the 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 any person, 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.

**Means and Methods of the Conspiracy**

16. Among the means and methods by which TAI NGUYEN, the defendant, Freeman, Barai, and their co-conspirators would and did carry out the conspiracy were the following:

a. NGUYEN obtained Abaxis Inside Information from the Abaxis Insider in advance of Abaxis's quarterly financial results.

b. NGUYEN provided the Abaxis Inside Information to Freeman, Barai, and other co-conspirators not named as defendants herein.

c. NGUYEN, Freeman, Barai, and other coconspirators not named as defendants herein executed profitable securities transactions in Abaxis stock based on the Abaxis Inside Information.

d. Hedge Fund A, Hedge Fund B, and Hedge Fund C caused NGUYEN to be compensated on a monthly basis both in direct payments from the respective hedge fund and/or through the Firm, as well as indirectly through soft dollar payments.

e. In furtherance of the fraudulent scheme, NGUYEN had numerous interstate telephone calls and/or interstate electronic communications with the Abaxis Insider, Freeman, Barai, and other co-conspirators not named as defendants herein.

Overt Acts

17. In furtherance of the conspiracy, and to effect the illegal objects thereof, TAI NGUYEN, the defendant, Noah Freeman, Samir Barai, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 26, 2006, NGUYEN purchased approximately 3,000 shares of Abaxis stock shortly before Abaxis announced its quarterly financial results.

b. In or about July 2006, NGUYEN had a telephone conversation with Freeman during which NGUYEN provided Freeman with Abaxis Inside Information.

c. On or about January 3, 2007, NGUYEN had an instant message communication with Barai, who was in New York, New York, during which NGUYEN provided Barai with Abaxis's nonpublic quarterly revenue results.

d. On or about January 31, 2008, NGUYEN sold short approximately 400 shares of Abaxis stock in advance of Abaxis's announcement of quarterly financial results on January 31, 2008.

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

**FORFEITURE ALLEGATION**

18. As a result of committing the offense alleged in Count One of this Information, TAI NGUYEN, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982, and Title 28, United States Code, Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of the offense.

**Substitute Assets Provision**

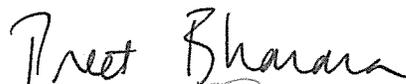
19. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981 and 982;  
Title 28, United States Code, Section 2461.)

  
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PREET BHARARA (MFL)  
United States Attorney

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United States Attorney.

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