

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
: UNITED STATES OF AMERICA :
: :
: -v.- :
: : INFORMATION
: RICHARD CHOO-BENG LEE, :
: : 09 Cr. ____
: Defendant. :
: :
: :
- - - - - X

COUNT ONE

(Conspiracy to Commit Securities Fraud and Wire Fraud)

The United States Attorney charges:

Relevant Entities and Individuals

1. In or about 2007, RICHARD CHOO-BENG LEE, the defendant, worked as a portfolio manager for a hedge fund based in New York, New York ("Hedge Fund A"). In or about 2007, LEE left Hedge Fund A to form Spherix Capital LLC ("Spherix"), a hedge fund based in California, where LEE worked as the President until the fall of 2009.

2. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-1") worked as a Managing Partner of Spherix. RICHARD CHOO-BENG LEE, the defendant, and CC-1 co-founded and co-managed Spherix together.

3. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-2") lived in Asia where s/he worked as a consultant. CC-2 was formerly

employed by a certain technology company whose securities are traded publicly on the New York Stock Exchange ("Technology Company A").

4. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-3") worked in Asia as an employee of a certain technology company whose securities are traded publicly on the NASDAQ ("Technology Company B").

5. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-4") worked in Asia as an employee of Technology Company B.

6. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-5") worked in California as an employee of a certain technology company whose securities are traded publicly on the New York Stock Exchange ("Technology Company C").

7. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-6") worked in California as an employee of a certain technology company whose securities are traded publicly on the NASDAQ ("Technology Company D").

8. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-7") worked in California as an employee of a certain technology company whose

securities are traded publicly on the NASDAQ ("Technology Company E").

9. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-8") worked in California as an employee of a certain technology company whose securities are traded publicly on the New York Stock Exchange ("Technology Company F").

10. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-9") worked in California for an investor relations firm located in California (the "IR Firm"). The IR Firm was in the business of providing investor relations services to its clients. In conducting its business, the IR Firm received material, nonpublic information regarding its clients that it and its employees were entrusted to maintain in confidence.

11. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-10") managed a certain hedge fund based in New York, New York ("Hedge Fund B"). In or about 2007, RICHARD CHOO-BENG LEE, the defendant, worked with CC-10 at Hedge Fund A.

12. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-11") worked in New York, New York as a portfolio manager for a certain hedge fund ("Hedge Fund C").

13. At certain times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-12") worked in New York, New York as a portfolio manager for a certain hedge fund ("Hedge Fund D").

The Insider Trading and Wire Fraud Scheme

14. From in or about 2007 through in or about March 2009, RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and others known and unknown, conspired to engage in insider trading and wire fraud. In furtherance of the conspiracy, LEE and CC-1 obtained material, nonpublic information ("Inside Information") from certain co-conspirators (and, in certain cases, exchanged Inside Information with such co-conspirators), known and unknown, including CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, all of whom worked at publicly traded companies or hedge funds, for the purpose of executing profitable trades on the basis of the Inside Information for the benefit of their hedge fund, Spherix. The Inside Information included information relating to Technology Company A, Technology Company B, Technology Company C, Technology Company D, Technology Company E, and Technology Company F (collectively, the "Technology Companies"). The employees of the Technology Companies were prohibited by the Technology Companies from trading on the basis of Inside Information obtained during the course of their employment and

from disclosing the Inside Information to others for personal benefit.

15. The Inside Information obtained by RICHARD CHOO-BENG LEE, the defendant, and CC-1, was provided in violation of (i) the fiduciary and other duties of trust and confidence owed by the source of the information to his or her employer, (ii) the expectation of confidentiality of the employer, and (iii) the employer's written policies regarding the use and safekeeping of Inside Information.

16. The Inside Information obtained by RICHARD CHOO-BENG LEE, the defendant, and CC-1 in furtherance of the conspiracy was provided by the co-conspirators to LEE and/or CC-1 in exchange for a personal benefit, which generally consisted of cash payments and/or information regarding technology companies.

17. Beginning in or about May 2008, RICHARD CHOO-BENG LEE, the defendant, and CC-1 arranged wire payments of approximately \$2,000 per fiscal quarter to certain of their sources of Inside Information, in exchange for the Inside Information provided by those sources.

18. Specifically, RICHARD CHOO-BENG LEE, the defendant, and CC-1 arranged for Spherix's prime broker to wire money from New York, New York to a foreign entity controlled by CC-2. LEE and CC-1 then arranged for CC-2 to wire money to certain co-conspirators, including, but not limited to, CC-3, CC-5 and CC-8.

LEE arranged to wire an additional \$1,000 per quarter to the entity controlled by CC-2 as a payment to CC-2 for his/her assistance in coordinating these wire payments.

19. RICHARD CHOO-BENG LEE, the defendant, and CC-1 earned profits (or avoided losses) in excess of \$5 million in one or more brokerage accounts affiliated with Spherix on securities trades based on Inside Information obtained in furtherance of the conspiracy.

The Conspiracy

20. From at least in or about 2007 up to and including in or about March 2009, RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, (i) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and (ii) wire fraud, in violation of Title 18, United States Code, Section 1343.

Objects of the Conspiracy

Securities Fraud

21. It was a part and an object of the conspiracy that RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-

5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and others known and unknown, unlawfully, 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 persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Wire Fraud

22. It was further a part and an object of the conspiracy that RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and others known and unknown, unlawfully, 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, namely, a scheme and artifice, among other things, to (a) deprive the employers of certain of the sources of Inside Information of the intangible rights to its employees' honest services; and (b) deprive the employers of certain of the sources of Inside Information of the exclusive use of intangible property, including certain confidential business information, 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.

Means and Methods of the Conspiracy

23. Among the means and methods by which RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and their co-conspirators would and did carry out the conspiracy were the following:

a. CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12 obtained Inside Information relating to quarterly earnings announcements and other transactions involving various companies including the Technology Companies, and provided this information to LEE with the understanding that LEE would use the information to execute securities transactions. The Inside Information provided to LEE by CC-2, CC-3, CC-4, CC-5, CC-6, CC-7,

CC-8, CC-9, CC-10, CC-11, and CC-12 was obtained in violation of fiduciary and other duties of trust and confidence owed by the sources of the information to their employers.

b. LEE and/or CC-1 executed securities trades based on the Inside Information obtained from CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12 using Spherix's prime broker, which was located in New York, New York.

c. At times, LEE provided monetary compensation and/or Inside Information to his co-conspirators in exchange for the Inside Information they provided to him.

Overt Acts

24. In furtherance of the conspiracy and to effect the illegal objects thereof, RICHARD CHOO-BENG LEE, the defendant, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6, CC-7, CC-8, CC-9, CC-10, CC-11, and CC-12, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 2, 2009, LEE received a phone call over interstate wires from CC-3.

b. On or about January 2, 2009, LEE caused Spherix to sell short 205,000 shares of stock in Technology Company B, using its prime broker located in New York, New York.

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

COUNT TWO

(Securities Fraud)

The United States Attorney further charges:

25. The allegations contained in paragraphs 1-19, 23 and 24, are repeated and realleged as though fully set forth herein.

26. On or about January 2, 2009, in the Southern District of New York and elsewhere, RICHARD CHOO-BENG LEE, the defendant, unlawfully, 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, in connection with the purchase and sale of securities, did use and employ 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 facts 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 persons, to wit, LEE executed transactions in the securities of Technology Company B on

the basis of Inside Information regarding Technology Company B that he had obtained from CC-3.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

27. As a result of committing one or more of the foregoing securities fraud offenses, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 18, United States Code, Section 371, and Title 17, Code of Federal Regulations, Section 240.10b-5, as alleged in Counts One and Two of this Information, RICHARD CHOO-BENG LEE, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses.

Substitute Assets Provision

28. 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

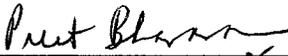
court;

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 15, United States Code, Sections 78j(b), 78ff;
Title 18, United States Code, Sections 371 and 981(a)(1)(C);
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461(c);
and Title 17, Code of Federal Regulations,
Section 240.10b-5.)



PREET BHARARA *th*
United States Attorney