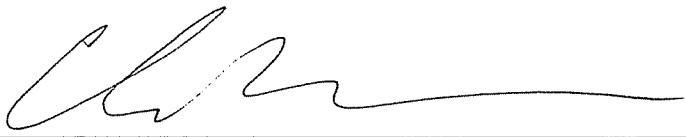


Approved:

  
CHRISTOPHER LAVIGNE / CHI T. STEVE KWOK  
Assistant United States Attorneys

Before: HONORABLE FRANK MAAS  
United States Magistrate Judge  
Southern District of New York

12 MAG 26-5

- - - - - x      SEALED COMPLAINT  
:  
UNITED STATES OF AMERICA      Violations of  
:  
- v. -      18 U.S.C. §§ 371 & 2;  
:  
BENJAMIN CHOUCANE,      15 U.S.C. §§ 78j(b) & 78ff;  
:  
Defendant.      17 C.F.R. § 240.10b-5  
:  
- - - - - x      COUNTY OF OFFENSE  
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

ERIC BURNS, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE  
(Conspiracy To Commit Securities Fraud)

1. From in or about February 2005, up to and including in or about December 2008, BENJAMIN CHOUCANE, the defendant, and others known and unknown, willfully and knowingly, did combine, conspire, confederate and agree together and with others to commit offenses against the United States, to wit, (a) 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; and (b) wire fraud, in violation of Title 18, United States Code, Section 1343.

2. It was a part and an object of the conspiracy that BENJAMIN CHOUCANE, the defendant, 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 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 a person; all in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

3. It was further a part and an object of the conspiracy that BENJAMIN CHOUCANE, the defendant, and others known and unknown, willfully and knowingly, having devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, transmitted and caused to be transmitted by means of a wire, radio, and television communication in interstate commerce, writings, signs, signals, pictures, and sounds for purposes of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

#### Overt Acts

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

a. On or about December 30, 2005, BENJAMIN CHOUCANE, the defendant, sent an e-mail from New York, New York, to a client containing a false trading confirmation stating that 43,000 shares of the stock of a company ("Company-1") were bought at the average price of \$49.6191/share.

b. On or about February 27, 2007, CHOUCANE sent an e-mail from New York, New York, to a client containing a false trading confirmation stating that 32,100 shares of the stock of a company ("Company-2") were bought at the average price of \$26.4356/share.

c. On or about October 1, 2008, CHOUCANE sent an e-mail from New York, New York, to a client containing a false trading confirmation stating that 112,900 shares of the stock of a company ("Company-3") were sold at the average price of \$30.8517/share.

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

COUNT TWO  
(Securities Fraud)

5. From in or about February 2005, up to and including in or about December 2008, BENJAMIN CHOUCANE, the defendant, 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, 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 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, in order to earn undisclosed profits on trades that CHOUCANE and others executed on behalf of certain institutional investors, CHOUCANE caused prices at which securities were bought and sold to be falsely recorded and reported to various clients.

(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.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

6. I am a Special Agent with the New York Office of the Federal Bureau of Investigation of the Department of Justice ("FBI") and I have been personally involved in the investigation of this matter. I have been a Special Agent with the FBI working on white collar investigations for approximately 3 years. During this time, my responsibilities have included the investigation of violations of the securities fraud and wire fraud statutes, among others, and I have participated in numerous investigations of offenses involving such violations.

7. This affidavit is based on my conversations with others, including other agents with the FBI, attorneys with the United States Securities and Exchange Commission ("SEC"), and individuals who worked with BENJAMIN CHOUCANE, the defendant. It is also based on my review of numerous documents, including, but not limited to, e-mails and trading records. Because this affidavit is being submitted for the limited purpose of

establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### Relevant Entity and Individuals

8. At all times relevant to this Complaint, Broker-Dealer 1 was a broker-dealer registered with the SEC and the Financial Industry Regulatory Authority ("FINRA"). Broker-Dealer 1 was headquartered in London, England, with offices in Europe, Asia, and New York, New York. Among other services Broker-Dealer 1 provided to its clients, Broker-Dealer 1 bought and sold securities on behalf of institutional clients, such as commercial banks and investment firms, located throughout the United States and in various major cities in Europe. At various times relevant to this Complaint, Broker-Dealer 1's New York office employed approximately 45 individuals.

9. From in or about February 2005, up to and including in or about December 2010, BENJAMIN CHOUCANE, the defendant, was employed by Broker-Dealer 1 and worked in the firm's New York City Office. CHOUCANE was a sales broker for Broker-Dealer 1's Cash Equity Desk. As a sales broker, CHOUCANE was responsible for receiving orders to buy or sell securities from Broker-Dealer 1's clients, relaying those orders to traders who executed the trades, communicating with clients as their orders were being filled, and, once the orders were completed, sending out trading confirmations that showed, among other things, the prices at which securities were bought or sold and the commissions, if any, that Broker-Dealer 1 charged.

10. From in or about February 2005, up to and including in or about November 2010, an individual who is now cooperating with the Government ("CW-1")<sup>1</sup> was employed by Broker-Dealer 1 and worked in the firm's New York City office. CW-1 was

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<sup>1</sup> On or about October 2, 2012, CW-1 pled guilty, pursuant to a cooperation agreement with the Government, to a criminal Information that charged him with various securities fraud violations relating to the allegations contained herein. CW-1 is cooperating with the Government in the hopes of receiving leniency from his sentencing Judge at the time of sentencing. As described elsewhere in this Affidavit, the information provided by CW-1 has thus far proven to be truthful and reliable, and, where possible, corroborated by independent sources of information.

a middle office manager and an execution trader for Broker-Dealer 1's Cash Equity Desk. As a middle office manager, CW-1 was responsible for inputting trading data, including the prices at which securities were bought and sold, into Broker-Dealer 1's trading blotters, which are spreadsheets that contain information about trade executions. As an execution trader, CW-1 received his order instructions from the sales brokers, including BENJAMIN CHOUCANE, the defendant, and executed buy and sell orders at the direction of sales brokers, including CHOUCANE.

#### Overview of the Scheme To Defraud

11. BENJAMIN CHOUCANE, the defendant, and others perpetrated a scheme to defraud certain institutional clients of Broker-Dealer 1 of millions of dollars in fees to which Broker-Dealer 1 was not entitled. These undisclosed profits were earned as a result of CHOUCANE and his co-conspirators misrepresenting the prices at which securities were bought and sold.

12. Specifically, where Broker-Dealer 1 received a buy order from a client, BENJAMIN CHOUCANE, the defendant, and others, at times, caused the purchase price of the security that would be reported back to the client to be "marked up" from its actual purchase price. On the flipside, where Broker-Dealer 1 received a sell order from a client, CHOUCANE and others, at times, caused the sale price of the security that would be reported back to the client to be "marked down" from its actual sale price. The difference between the actual execution prices and the false prices reported to clients was not disclosed to Broker-Dealer 1's clients. Rather, it was secretly added to or subtracted from the actual execution prices of securities, and was separate and apart from Broker-Dealer 1's agreed-upon commissions that were disclosed on trading confirmations sent to Broker-Dealer 1's clients.

#### The Scheme To Defraud

13. Based on my interviews with CW-1, I have learned the following:

a. Throughout CW-1's employment at Broker-Dealer 1's Cash Equity Desk in New York, CW-1's compensation consisted of a base salary and a performance bonus. CW-1 understood that his bonus was determined at the discretion of a co-conspirator not named as a defendant herein, who was the head of the Cash Equity Desk at Broker-Dealer 1's New York Office ("CC-1"). CW-1 also understood that the size of his bonus was based in large part on the productivity of the Cash Equity Desk as a whole.

b. At various times during his employment at Broker-Dealer 1's Cash Equity Desk in New York, CW-1 overheard numerous conversations where CC-1 instructed BENJAMIN CHOUCANE, the defendant, another co-conspirator not named as a defendant herein, who was employed as a sales broker for Broker-Dealer 1's Cash Equity Desk in New York ("CC-2"), and others, in sum and substance, to "take more on the trade." CW-1 understood this to be CC-1's instruction to increase the undisclosed markup (in the case of a purchase order) and markdown (in the case of a sale order) between the price reported to the client and the security's true execution price.

c. When he was asked to execute trades on behalf of Broker-Dealer 1's clients, CW-1 received his order instructions from, among others, CHOUCANE and CC-2. On various occasions after CHOUCANE instructed CW-1 to charge an undisclosed markup, CHOUCANE asked CW-1, in sum and substance, whether the client, who had since received the trading confirmation, had "said anything about the markup."

d. Sometime in or about 2006, CW-1, who sat in close proximity to CHOUCANE, learned from CHOUCANE that a Broker-Dealer 1 client, whose trades CHOUCANE had previously handled, requested detailed trading records reflecting the execution prices of the securities that Broker-Dealer 1 had bought or sold on its behalf. Shortly after CHOUCANE learned about this request from the client and told CW-1 about it, CHOUCANE began speaking with CC-1 in French, and CHOUCANE's demeanor, as observed by CW-1, became very tense and flustered.

e. In or about late 2008, as the result of a company restructuring, a new compliance officer was hired to oversee the activities of the Cash Equity Desk. Shortly after the announcement of the hiring of the new compliance officer, CC-1 convened a meeting that CHOUCANE, CC-2, and CW-1 attended. During this meeting, CC-1 stated, in sum and substance, that as a result of the hiring of the new compliance manager they had to stop charging markups.

f. After the meeting described in the preceding paragraph, CW-1 had multiple conversations with CHOUCANE and CC-2 about various ways to continue charging markups. Among other things, they discussed going to work at another broker-dealer, or, recording the trades in different ways that would mask the markups from the new compliance officer and Broker-Dealer 1's clients.

14. On September 11, 2012, acting under the instructions of the FBI and equipped with an audio recording device, CW-1 met with, among others, CC-2 and BENJAMIN CHOUCANE, the defendant. During this meeting, CW-1 and CHOUCANE, who had each left Broker-Dealer 1 in or about November 2010 and in or about December 2010, respectively, discussed their past employment at Broker-Dealer 1. CW-1 stated, in sum and substance, "it was crazy, a different world, compared to now." CHOUCANE stated, in sum and substance, "And we were doing markups . . . which I've stopped those since we were at [Broker-Dealer 1]."<sup>2</sup> CW-1 asked, "Really? [CHOUCANE's current employer] doesn't do them?" CHOUCANE responded, "No, you know, they used to do that when it was good, like us. . . . Now you can have an investigation from the SEC, from the bank, from the hedge fund . . . . I don't think it's worth taking the risk. You know, to be honest, it's annoying for me. . . . But I feel really better because I know that even if a client is coming to me, or if FINRA is coming, I can say, 'I don't care.'" CC-2 said, in sum and substance, "It depends if you trade on a principal basis." CHOUCANE responded, "I checked with corporate and you can't, unless you disclose it to the client. . . . That's the only thing you can do. . . . If you don't disclose it, you can't do it. . . . You have to specify it on the confirmation."

15. I have reviewed trading records and trading blotters maintained by Broker-Dealer 1. Based on my review of these materials, I have learned the following:

December 30, 2005 Purchase Order

a. On or about December 30, 2005, at approximately 8:40 a.m., CC-2 sent an e-mail to BENJAMIN CHOUCANE, the defendant, which reads as follows: "Thanks - I got your message . . . . Just use what you think is going to be best. . . . I appreciate it."

b. At approximately 8:42 a.m., CHOUCANE responded in an e-mail as follows: "No prob . . . . I will try to take some mark up. . . . I just want to make sure that [the

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<sup>2</sup> Based on my discussion with CW-1 and my involvement in this investigation, I believe that, when CHOUCANE said "doing markups," he was referring to the markup scheme (in the case of a buy order) or markdown scheme (in the case of a sell order) carried out at Broker-Dealer 1 that is described elsewhere in this Complaint.

client] will not be disappointed [sic] as you are not here, he might check the levels, so we have to be careful."

c. At 8:50 a.m., CC-2 replied in an e-mail as follows: "Ben, don't worry abt the mark up - as you say [the client] may look at the orders more carefully - just send him the net prices and the start and end time of the execution period."

d. At approximately 12:07 p.m., CHOUCANE received an instant message from a Broker-Dealer 1 client located in Munich, Germany, who requested the purchase of, among other things, 43,000 shares of a multinational company ("Company-1").

e. The buy order was executed throughout the day on December 30, 2005 in various tranches.<sup>3</sup> Based on my review of trading records showing the prices at which shares of Company-1's stock were bought, I have calculated the average price per share of 43,000 shares of Company-1's stock as \$49.6067.

f. On December 30, 2005, at approximately 1:58 p.m., CW-1 sent an e-mail to, among others, the client who placed the purchase order described in paragraph 15(d). In this e-mail, CW-1 attached a trading confirmation, which shows the average cost/share of 43,000 shares of Company-1's stock as "\$49.6191," i.e., \$0.0124/share more than the actual average price/share of \$49.6067. With respect to the commissions charged for this transaction, the following is shown: "Commission rate: 0"; "Commission: USD 0." Because 43,000 shares of Company-1's stock were purchased, Broker-Dealer 1 earned \$533.20 (\$0.0124/share x 43,000 shares) in undisclosed profit from this transaction.

g. Broker-Dealer 1's trading blotter, which, as explained above, is a spreadsheet maintained by Broker-Dealer 1 that contains information about the trades that Broker-Dealer 1 executed, contained similarly skewed, albeit less precise, price information for this purchase of 43,000 shares of Company-1's stock. Under the column entitled "Execution Price," which purportedly sets forth the actual average prices at which securities were bought and sold, an average price/share of

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<sup>3</sup> Based on my review of trading records and my involvement in this investigation, I have learned that when broker-dealers, including Broker-Dealer 1, receive an order from a client to buy or sell a large number of securities, the order is typically executed by buying or selling the securities in batches of smaller quantities, or, "tranches," at different points in time until the entire order is filled.



\$"49.607" is shown for this trade. Under the column entitled "Gross Price," which purportedly sets forth the average prices plus any fees that Broker-Dealer 1 charged, an average price/share of \$"49.619" is shown. In other words, the price shown under the "Gross Price" column is \$0.012/share more than the price shown under the "Execution Price" column. The trading confirmation that Broker-Dealer 1 sent to the client (which, as explained in subparagraph (f) above, reflected a price of \$49.6191) did not provide the actual purchase price, as reflected in the "Execution Price" column of the trading blotter.

February 27, 2007 Purchase Order

h. On or about February 27, 2007, at approximately 3:36 p.m., CHOUCANE received an e-mail from another Broker-Dealer 1 client located in London, England, who requested that \$838,738.64 be spent to buy the shares of a multinational company ("Company-2").

i. The order was executed on February 27, 2007 in tranches of varying quantities. By the time the order was completed, 32,100 shares of Company-2's stock were bought. Based on my review of trading records showing the prices at which shares of Company-2's stock were purchased, I have calculated the average price per share of 32,100 shares of Company-2's stock as \$26.3956.

j. On February 27, 2007, at approximately 7:02 p.m., CHOUCANE sent an e-mail to, among others, the client who placed the buy order described in paragraph 15(h). In this e-mail, CHOUCANE attached a trading confirmation, which shows the average cost/share of 32,100 shares of Company-2's stock as \$"26.4356," i.e., \$0.04/share more than the actual average price/share of \$26.3956. Because 32,100 shares of Company-2's stock were purchased, Broker-Dealer 1 earned \$1,284 (\$0.04/share x 32,100 shares) in undisclosed profit from this transaction.

k. Broker-Dealer 1's trading blotter contained similarly skewed price information for this purchase of 32,100 shares of Company-2's stock. Under the column entitled "Execution Price," an average price/share of \$"26.3956" is shown for this trade. Under the column entitled "Gross Price," an average price/share of \$"26.4356" is shown. In other words, the price shown under the "Gross Price" column is \$0.04/share more than the price shown under the "Execution Price" column. The trading confirmation that Broker-Dealer 1 sent to the client (which, as explained in subparagraph (j) above, reflected a price of \$26.4356) did not provide the actual purchase price, as

reflected in the "Execution Price" column of the trading blotter.

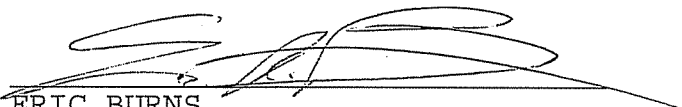
16. Based on my investigation to date, the two examples cited above in paragraph 15 are illustrative of a broad pattern at Broker-Dealer 1's Cash Equity Desk of marking up purchase prices and marking down sale prices in which BENJAMIN CHOUCANE, the defendant, was involved with others. Based on calculations to date, from in or about 2005 up to and including in or about December 2008, Broker-Dealer 1's clients were defrauded of millions of dollars in improper markups and markdowns.

17. As a result of the scheme to defraud, BENJAMIN CHOUCANE, the defendant, and others were awarded more lucrative performance bonuses. Based on my review of CHOUCANE's personnel file, I have learned the following:

a. CHOUCANE's compensation was tied to the "revenue allocated to [him] from [his] work in [his] team," i.e., the Cash Equity Desk. Specifically, CHOUCANE was eligible to receive a "standard bonus" "equivalent to twenty five percent of all revenue" attributable to CHOUCANE above \$30,000 per quarter. On top of the "standard bonus," CHOUCANE was eligible to receive a "premium bonus" "equivalent to an extra twenty five percent of all revenue" attributable to CHOUCANE above \$65,000 per quarter. Finally, on top of the bonuses described above, CHOUCANE was eligible to receive a "super bonus" "equivalent to an extra ten percent of all revenue" attributable to CHOUCANE above \$95,000 per quarter.

b. Based on my review of salary records maintained by Broker-Dealer 1, I have learned that, on top of his annual salary of approximately \$50,000, CHOUCHANE received a bonus of \$1,268,293.26 in 2007, a bonus of \$2,060,597.95 in 2008, and a bonus of \$1,514,634.12 in 2009.

WHEREFORE, deponent prays that a warrant be issued for the arrest of BENJAMIN CHOUCHANE, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

  
ERIC BURNS  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
4 day of October, 2012

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

OCT 04 2012

**FRANK MAAS**  
United States Magistrate Judge  
Southern District of New York