

JUDGE RAKOFF

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA  
:  
-v.-  
:  
RAJAT K. GUPTA,  
:  
Defendant.  
:  
----- x

SEALED INDICTMENT

11 CRIM 907

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#:  
DATE FILED: OCT 25 2011

COUNT ONE  
(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, The Goldman Sachs Group, Inc. ("Goldman Sachs") was a global financial services firm with its headquarters in New York, New York. At all times relevant to this Indictment, Goldman Sachs was a public company whose stock traded on the New York Stock Exchange ("NYSE") under the ticker symbol "GS."

2. At all times relevant to this Indictment, RAJAT K. GUPTA, the defendant, served on the Board of Directors of Goldman Sachs (the "Goldman Sachs Board"). In his capacity as a member of the Goldman Sachs Board, GUPTA regularly received confidential information about Goldman Sachs's earnings, contemplated and actual corporate transactions, and other significant developments prior to Goldman Sachs's public announcement of such information.

3. At all times relevant to this Indictment, the Procter & Gamble Company ("P&G") was a global provider of branded consumer products with its headquarters in Cincinnati, Ohio. At all times relevant to this Indictment, P&G was a public company whose stock traded on the NYSE under the ticker symbol "PG."

4. At all times relevant to this Indictment, RAJAT K. GUPTA, the defendant, served on the Board of Directors of P&G (the "P&G Board"). In his capacity as a member of the P&G Board, GUPTA regularly received confidential information about P&G's earnings, contemplated and actual corporate transactions, and other significant developments prior to P&G's public announcement of such information.

5. At all times relevant to this Indictment, the Galleon Group ("Galleon") operated a family of hedge funds in New York, New York. Galleon Management, LP ("Galleon Management") managed a number of those hedge funds, including the Galleon Technology Offshore Fund, Ltd., and Galleon Diversified Fund, Ltd. (collectively, the "Galleon Tech Funds").

6. Raj Rajaratnam ("Rajaratnam") was the founder and head of Galleon. At all times relevant to this Indictment, Rajaratnam was the Managing Member of Galleon Management LLC, the general partner of Galleon Management. In addition, at all times relevant to this Indictment, Rajaratnam was a portfolio manager for the Galleon Tech Funds.

7. At all times relevant to this Indictment, Berkshire Hathaway Inc. ("Berkshire Hathaway") was a public holding company headquartered in Omaha, Nebraska, that owned a number of subsidiaries engaged in a variety of business activities, including the insurance business.

The Relationship Between GUPTA and Rajaratnam

8. At all times relevant to this Indictment, RAJAT K. GUPTA, the defendant, and Rajaratnam had numerous business dealings with each other. In addition, GUPTA and Rajaratnam maintained a personal relationship and friendship. Their business dealings included the following:

a. From in or about 2003 through in or about August 2005, GUPTA had money invested in at least two different Galleon offshore funds through an offshore entity that GUPTA had created. On or about March 31, 2005, the value of those investments was approximately \$2,444,518.

b. In or about 2005, GUPTA and Rajaratnam, along with a third individual, formed an investment fund called Voyager Capital Partners ("Voyager"). At the time Voyager was formed, GUPTA invested \$5 million and Rajaratnam invested \$40 million. In or about early 2007, GUPTA invested an additional \$5 million in Voyager, resulting in GUPTA having a 20% equity interest and Rajaratnam having an 80% equity interest. Certain of the assets

in Voyager were invested in Galleon hedge funds, including funds managed by Rajaratnam.

c. In or about 2006, GUPTA and Rajaratnam, along with other individuals, became founding partners of a private equity fund focused on investments in emerging markets in Asia ("Private Equity Fund"). GUPTA made a commitment to invest approximately \$22.5 million and Rajaratnam made a commitment to invest approximately \$50 million. From inception through in or about March 2010, GUPTA served as the Chairman of the Private Equity Fund. From inception through in or about December 2008, Rajaratnam served as a limited partner of the Private Equity Fund and a member of the Private Equity Fund's investment committee.

d. In or about late 2007, Rajaratnam explored the possibility of launching a new Galleon fund that would invest in late-stage private equity in emerging markets in Asia. In connection with that contemplated fund, representatives of Galleon prepared marketing materials and contacted potential investors. GUPTA and Rajaratnam, among others, were to serve as members of the fund's investment committee.

**Relevant Confidentiality Policies**

9. At all times relevant to this Indictment, the directors who served on the Goldman Sachs Board, including RAJAT K. GUPTA, the defendant, had an obligation to maintain the confidentiality of information received in connection with their

service as directors, and an obligation not to provide the information to others for the purpose of securities trading.

10. At all times relevant to this Indictment, the directors who served on the P&G Board, including RAJAT K. GUPTA, the defendant, had an obligation to maintain the confidentiality of information received in connection with their service as directors, and an obligation not to provide the information to others for the purpose of securities trading.

**The Insider Trading Scheme**

11. From at least in or about 2008 through in or about January 2009, RAJAT K. GUPTA, the defendant, Raj Rajaratnam, and others known and unknown, participated in a scheme to defraud by disclosing material, nonpublic information relating to Goldman Sachs and P&G (the "Inside Information") and/or executing securities transactions on the basis of the Inside Information. GUPTA, Rajaratnam, and others known and unknown, effectuated the fraudulent scheme in the following ways:

a. GUPTA obtained the Inside Information in his capacity as a member of the Goldman Sachs Board and the P&G Board.

b. In violation of duties of trust and confidence that GUPTA owed to Goldman Sachs and P&G, and their respective shareholders, GUPTA disclosed the Inside Information to Rajaratnam, with the understanding that Rajaratnam would use the Inside Information to purchase and sell securities.

c. Rajaratnam, in turn, knowing that GUPTA had disclosed the Inside Information to him in violation of duties of trust and confidence, caused the execution of transactions in the securities of Goldman Sachs, P&G, and other companies on the basis of the Inside Information, and shared the Inside Information with other coconspirators at Galleon, thereby earning illegal profits (and illegally avoiding losses) of millions of dollars.

GUPTA's Disclosure of Inside Information Concerning Berkshire Hathaway's \$5 Billion Investment in Goldman Sachs

12. For example, on or about September 23, 2008, RAJAT K. GUPTA, the defendant, participated by telephone in a special meeting of the Goldman Sachs Board. During that meeting, the Goldman Sachs Board considered and approved a \$5 billion investment from Berkshire Hathaway (at a time when the financial markets were experiencing significant distress in the wake of the bankruptcy filing of Lehman Brothers Holdings Inc. on or about September 15, 2008). The public announcement of Berkshire Hathaway's investment in Goldman Sachs was announced following the 4:00 p.m. close of the NYSE on September 23, 2008. Prior to the public announcement, that information was confidential.

13. Approximately 16 seconds after RAJAT K. GUPTA, the defendant, disconnected his telephone from the special meeting of the Goldman Sachs Board on September 23, 2008, at approximately 3:54 p.m., GUPTA's assistant called Rajaratnam at his office in New York, New York, and shortly thereafter, connected GUPTA to the

call. During that call, GUPTA disclosed Inside Information to Rajaratnam concerning Berkshire Hathaway's investment in Goldman Sachs.

14. On September 23, 2008, at approximately 3:58 p.m., just two minutes before the close of the market, and prior to the public announcement of Berkshire Hathaway's investment in Goldman Sachs, Rajaratnam caused the Galleon Tech Funds to order the purchase of approximately 350,000 shares of Goldman Sachs common stock, which was worth a total value of approximately \$43 million. Of that amount, the Galleon Tech Funds purchased approximately 217,200 shares of Goldman Sachs common stock at approximately \$124 per share, at a total cost of approximately \$27 million.

15. Later on September 23, 2008, following the close of the NYSE, Goldman Sachs publicly announced the investment by Berkshire Hathaway. Goldman Sachs's stock opened the following morning, September 24, 2008, at \$128.44 per share, reflecting an increase of more than \$3.00 per share from the pre-announcement closing price of \$125.05 per share.

16. On or about September 24, 2008, Rajaratnam caused the Galleon Tech Funds to liquidate its position in Goldman Sachs stock. The sale of the 217,200 Goldman Sachs shares that had been purchased at approximately 3:58 p.m. on September 23, 2008 generated for the Galleon Tech Funds an illegal profit of approximately \$840,000.

17. On the morning of September 24, 2008, at approximately 7:05 a.m., Rajaratnam spoke by telephone with a trader at Galleon and, during that conversation, Rajaratnam told the trader that he had gotten a call at 3:58 p.m. the day before saying something good might happen to Goldman Sachs. Less than an hour later, at approximately 7:56 a.m., on September 24, 2008, Rajaratnam again spoke by telephone with the same trader and, during that conversation, Rajaratnam told the trader that he had gotten a call at 3:58 p.m. the day before saying something good was going to happen to Goldman Sachs.

GUPTA's October 2008 Disclosure of Inside Information Concerning  
Goldman Sachs's Negative Interim Financial Results

18. As another example, on or about October 23, 2008, RAJAT K. GUPTA, the defendant, participated by telephone in a meeting of the Goldman Sachs Board in which senior executives of the company advised the members of the Goldman Sachs Board of significant developments and issues at the company. Goldman Sachs's confidential internal financial analyses showed that for the quarter ending November 28, 2008, the company had, at that point, lost nearly \$2 per share. That information was particularly significant because in the firm's history as a public company, it had never before lost money in any quarter. Goldman Sachs did not publicly disclose those negative interim financial results, and that information was confidential.



19. Approximately 23 seconds after RAJAT K. GUPTA, the defendant, disconnected from the call with the Goldman Sachs Board on October 23, 2008, at approximately 4:49 p.m., GUPTA called Rajaratnam and spoke to Rajaratnam by telephone for approximately 13 minutes. During that call, GUPTA disclosed to Rajaratnam Inside Information concerning Goldman Sachs's negative interim earnings.

20. On the basis of the Inside Information provided by RAJAT K. GUPTA, the defendant, Rajaratnam caused the Galleon Tech Funds to execute transactions in Goldman Sachs securities that enabled the Galleon Tech Funds illegally to avoid a loss of several million dollars. Specifically, on the morning of October 24, 2008, shortly after the NYSE opened, beginning at approximately 9:31 a.m., Rajaratnam caused the Galleon Tech Funds to sell its entire long position in Goldman Sachs stock, which consisted of approximately 150,000 shares, at prices ranging from \$97.74 to \$102.17.

21. At approximately 12:08 p.m. on October 24, 2008, Rajaratnam spoke by telephone with a Galleon portfolio manager. During that conversation, Rajaratnam stated that he had heard the day before from someone on the Goldman Sachs Board that, among other things, Goldman Sachs was losing \$2 per share, which was substantially worse than the prevailing market expectations at the time.

22. On or about December 16, 2008, Goldman Sachs publicly announced that for the quarter ended November 28, 2008, the company had lost approximately \$2.12 billion, or \$4.97 per share. By selling approximately 150,000 shares of Goldman Sachs common stock on October 24, 2008, the Galleon Tech Funds illegally avoided a loss of several million dollars.

GUPTA's January 2009 Disclosure of Inside Information Concerning Procter & Gamble's Quarterly Financial Results

23. As another example, beginning at approximately 9:00 a.m., on or about January 29, 2009, the day before P&G publicly announced its quarterly earnings, RAJAT K. GUPTA, the defendant, participated by telephone, from Switzerland, in a meeting of the Audit Committee of the P&G Board. During that call, the Audit Committee discussed the next day's earnings release, a draft of which had previously been circulated to the members of the Audit Committee, including GUPTA. That draft stated, among other things, that the company expected its organic sales (i.e., sales related to preexisting business segments) to grow 2-5% for the fiscal year, which compared negatively to the guidance that P&G had previously provided to the public.

24. At approximately 1:18 p.m., on or about January 29, 2009, RAJAT K. GUPTA, the defendant, called Rajaratnam from Switzerland and spoke to Rajaratnam for approximately eight minutes. During that call, GUPTA provided Inside Information to Rajaratnam concerning P&G's earnings release planned for the next

day. That same afternoon, Rajaratnam told a portfolio manager at Galleon that he had heard from someone on the P&G Board certain information concerning P&G's organic sales growth. Thereafter, beginning at approximately 2:52 p.m., on or about January 29, 2009, on the basis of the Inside Information that GUPTA had provided to Rajaratnam, certain Galleon funds sold short approximately 180,000 shares of P&G common stock.

25. RAJAT K. GUPTA, the defendant, provided the Inside Information to Rajaratnam because of GUPTA's friendship and business relationships with Rajaratnam. GUPTA benefitted and hoped to benefit from his friendship and business relationships with Rajaratnam in various ways, some of which were financial.

#### The Conspiracy

26. From at least in or about 2008 up to and including in or about January 2009, in the Southern District of New York and elsewhere, RAJAT K. GUPTA, the defendant, Raj Rajaratnam, 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, 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.

**Object of the Conspiracy**

**Securities Fraud**

27. It was a part and an object of the conspiracy that RAJAT K. GUPTA, the defendant, Raj Rajaratnam, 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 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**

28. Among the means and methods by which RAJAT K. GUPTA, the defendant, Raj Rajaratnam, and their coconspirators would and did carry out the conspiracy were the following:

a. GUPTA disclosed Inside Information obtained from Goldman Sachs and P&G in violation of (a) the fiduciary and other duties of trust and confidence that GUPTA owed to those companies and their shareholders, (b) the expectations of confidentiality of the counterparties to transactions with Goldman Sachs and P&G, and (c) the policies of Goldman Sachs and P&G regarding the use and safekeeping of confidential and material, nonpublic information.

b. GUPTA, in breach of his duties of confidentiality to Goldman Sachs and P&G, and their respective shareholders, disclosed Inside Information to Rajaratnam, with the understanding that Rajaratnam would use the Inside Information to purchase and sell securities, and thereby receive illegal profits and/or illegally avoid losses.

c. Rajaratnam, while in possession of Inside Information that Rajaratnam knew had been disclosed by GUPTA in breach of GUPTA's duty to keep the information confidential, executed trades and caused others to execute trades based on the Inside Information and thereby received illegal profits and/or illegally avoided losses.

d. Rajaratnam shared the Inside Information provided by GUPTA with other coconspirators at Galleon.

Overt Acts

29. In furtherance of the conspiracy and to effect the illegal object thereof, RAJAT K. GUPTA, the defendant, Raj Rajaratnam, and their coconspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about June 3, 2008, Rajaratnam told a portfolio manager at Galleon that he had learned from someone on the P&G Board that P&G was selling its Folgers business to the J.M. Smucker Company.

b. On or about June 10, 2008, at approximately 5:41 p.m., GUPTA spoke by telephone with a senior executive officer of Goldman Sachs.

c. On or about June 10, 2008, at approximately 9:24 p.m., GUPTA called Rajaratnam.

d. On or about June 10, 2008, at approximately 9:31 p.m., GUPTA called and left a voice mail message for Rajaratnam.

e. On or about June 10, 2008, at approximately 9:42 p.m., GUPTA spoke by telephone with Rajaratnam, who was in New York, New York.

f. On or about June 11, 2008, at approximately 8:43 a.m., while in New York, New York, Rajaratnam called GUPTA.

g. On or about June 11, 2008, beginning at approximately 9:35 a.m., Rajaratnam caused the Galleon Tech Funds to purchase approximately 5,500 Goldman Sachs call option contracts.

h. On or about June 12, 2008, Rajaratnam caused the Galleon Tech Funds to purchase approximately 50,000 shares of Goldman Sachs common stock.

i. On or about June 12, 2008, Rajaratnam caused the Galleon Tech Funds to purchase approximately 75,000 shares of Goldman Sachs common stock.

j. On or about July 29, 2008, at approximately 5:39 p.m., GUPTA spoke by telephone with Rajaratnam and disclosed information that GUPTA had learned during a meeting of the Goldman Sachs Board.

k. On or about September 23, 2008, from approximately 3:13 p.m. to 3:54 p.m. and 34 seconds, while in New York, New York, GUPTA participated by telephone in a meeting of the Goldman Sachs Board.

l. On or about September 23, 2008, at approximately 3:54 p.m. and 50 seconds, at GUPTA's direction, GUPTA's assistant called Rajaratnam at his office in New York, New York.

m. On or about September 23, 2008, at approximately 3:55 p.m., while in New York, New York, GUPTA spoke

by telephone with Rajaratnam and disclosed Inside Information concerning Berkshire Hathaway's investment in Goldman Sachs.

n. On or about September 23, 2008, at approximately 3:58 p.m., while in New York, New York, Rajaratnam caused Galleon to purchase approximately 217,200 shares of Goldman Sachs common stock.

o. On or about September 23, 2008, at approximately 6:16 p.m., GUPTA called and left a voice mail message for Rajaratnam.

p. On or about September 24, 2008, at approximately 7:05 a.m., Rajaratnam spoke by telephone with a trader at Galleon who was in New York, New York ("Trader-A").

q. On or about September 24, 2008, at approximately 7:56 a.m., Rajaratnam spoke by telephone with Trader-A, who was in New York, New York.

r. On or about October 23, 2008, from approximately 4:16 p.m. to 4:49 p.m. and 47 seconds, GUPTA participated by telephone in a meeting of the Goldman Sachs Board.

s. On or about October 23, 2008, at approximately 4:50 p.m., GUPTA spoke by telephone with Rajaratnam, who was in New York, New York, and provided Inside Information concerning Goldman Sachs's negative interim earnings.

t. On or about October 24, 2008, beginning at approximately 9:31 a.m., Rajaratnam caused the Galleon Tech Funds



to sell approximately 150,000 shares of Goldman Sachs common stock.

u. On or about October 24, 2008, at approximately 12:08 p.m., Rajaratnam spoke by telephone with a Galleon portfolio manager.

v. On or about January 29, 2009, at approximately 9:00 a.m., GUPTA, while in Switzerland, participated by telephone in a meeting of the Audit Committee of the P&G Board.

w. On or about January 29, 2009, at approximately 1:18 p.m., GUPTA, while in Switzerland, called Rajaratnam, who was in New York, New York.

x. On or about January 29, 2009, Rajaratnam told a Galleon portfolio manager, who was in New York, New York, that he had received certain information concerning P&G's organic sales growth from a contact on the P&G Board.

y. On or about January 29, 2009, beginning at approximately 2:52 p.m., certain Galleon funds sold short approximately 180,000 shares of P&G common stock.

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

**COUNTS TWO THROUGH SIX**  
(Securities Fraud)

The Grand Jury further charges:

30. The allegations contained in paragraphs 1 through 25 and 28 through 29 are repeated and realleged as if fully set forth herein.

31. On or about the dates set forth below, in the Southern District of New York and elsewhere, RAJAT K. GUPTA, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails and 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 Regulation, 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 any person, to wit, on the basis of Inside Information that GUPTA disclosed to Raj Rajaratnam in violation of GUPTA's fiduciary and other duties of confidentiality, Rajaratnam executed and caused others to execute the securities transactions listed below:

COUNT	DATE	SECURITY	TRANSACTION
TWO	September 23, 2008 at approximately 3:58 p.m.	Goldman Sachs	Purchase of approximately 150,000 shares of common stock
THREE	September 23, 2008 at approximately 3:58 p.m.	Goldman Sachs	Purchase of approximately 67,200 shares of common stock
FOUR	October 24, 2008 at approximately 9:31 a.m.	Goldman Sachs	Sale of approximately 50,000 shares of common stock
FIVE	October 24, 2008 at approximately 10:09 a.m.	Goldman Sachs	Sale of approximately 50,000 shares of common stock
SIX	October 24, 2008 at approximately 10:37 a.m.	Goldman Sachs	Sale of approximately 50,000 shares of common stock

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

**FORFEITURE ALLEGATION**

32. As a result of committing one or more of the foregoing securities fraud offenses alleged in Counts One through Six of this Indictment, RAJAT K. GUPTA, 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 alleged in Counts One through Six, including but not limited to the following:

Money Judgment

a. At least a sum of money in United States currency which was derived from proceeds traceable to the commission of the securities fraud offenses alleged in Counts One through Six.

Substitute Assets Provision

33. 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;

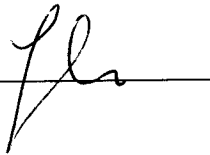
d. has been substantially diminished in value; or

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

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FOREPERSON



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PREET BHARARA  
United States Attorney



Form No. USA-33s-274 (Ed. 9-25-58)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

RAJAT K. GUPTA,

Defendant.

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INDICTMENT

11 Cr. \_\_\_\_

(Title 15, United States Code,  
Sections 78j(b) and 78ff;  
Title 17, Code of Federal Regulations,  
Section 240.10b-5; and Title 18, United  
States Code, Sections 2 and 371.)

PREET BHARARA  
United States Attorney.

A TRUE BILL

  
\_\_\_\_\_  
Foreperson.

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10.25.11  
MB

Filed Indictment Under Seal

A/W issued  
Kevin Fox  
U.S.M.J.