MAG 2625 Approved: REED BRODSKY ANTONIA APPS DAVID LEIBOWITZ

Assistant United States Attorneys

ANDREW MICHAELSON

Special Assistant United States Attorney

Before:

HONORABLE THEODORE H. KATZ

United States Magistrate Judge Southern District of New York

SEALED COMPLAINT UNITED STATES OF AMERICA

-V.-

Violations of Title 18, United States Code,

DON CHING TRANG CHU, Sections 371 and 1349 a/k/a "Don Chu,"

COUNTY OF OFFENSE:

Defendant. NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

B. J. KANG, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Conspiracy to Commit Securities Fraud)

From at least in or about January 2009 through in or about August 2009, in the Southern District of New York and elsewhere, DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and others known and unknown, unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States of America, to wit, securities fraud, in violation of Title 15, United States Code, Section 78; (b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

It was a part and an object of the conspiracy 2. that DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, 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 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.

Overt Acts

- 3. 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 July 20, 2009, at approximately 4:57 p.m., CHU sent an email message to arrange a telephone consultation on behalf of his employer with a co-conspirator not named herein ("CC-1") who was an employee of a technology company ("the Tech Company"), which company listed its shares for trading on the New York Stock Exchange in New York, New York:
- b. On or about July 21, 2009, CC-1 had two telephone conversations with a cooperating witness ("CW-1"), during which CC-1 provided material non-public information to CW-1 about the Tech Company, in breach of fiduciary and other duties of confidentiality owed by CC-1 to the Tech Company;
- c. On or about August 4, 2009, CHU and CW-1 discussed the July 21, 2009, telephone call between CC-1 and CW-1;

d. On or about August 28, 2009, at approximately 8:48 p.m., CHU spoke on the telephone with CW-1 and discussed facilitating additional consultations between CW-1 and certain employees of other publicly-traded companies for purposes of facilitating CW-1's trading in the securities of those companies.

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

COUNT TWO

(Conspiracy to Commit Wire Fraud and Fraud in Connection With Securities)

- 4. From at least in or about January 2009 through in or about August 2009, in the Southern District of New York and elsewhere, DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and others known and unknown, unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States of America, to wit, wire fraud, in violation of Title 18, United States Code, Section 1343, and fraud in connection with securities, in violation of Title 18, United States Code, Section 1348.
- 5. It was a part and an object of the conspiracy that DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, 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, would and did transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.
- 6. It was a further part and object of the conspiracy that DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and others known and unknown, unlawfully, willfully, and knowingly, having executed a scheme and artifice (a) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. § 781) and that is required to file reports under section 15(d) of the

Securities and Exchange Act of 1934 (15 U.S.C. § 780(d)); and (b) to obtain, by means of false or fraudulent pretenses, representations, and promises, any money and property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. § 781) and that is required to file reports under section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. § 780(d)), in violation of Title 18, United States Code, Section 1348.

Overt Acts

7. In furtherance of the conspiracy and to effect the illegal objects thereof, DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and others known and unknown, committed the same overt acts set forth above in Count One of this Complaint, among others, in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 1349.)

The basis for my knowledge and the foregoing charge is, in part, as follows:

- 8. I have been a Special Agent of the FBI for approximately six years, and I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in numerous investigations of such offenses, and I have made and participated in making arrests of several individuals for participating in such offenses.
- 9. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including: (a) information provided to me by the United States Securities and Exchange Commission (the "SEC"); (b) bank records and documents obtained from the Department of Homeland Security Immigration and Customs Enforcement; (c) publicly available documents; (d) analysis of court authorized pen register records and telephone toll records; (e) information obtained from cooperating sources, including consensually recorded conversations between cooperating sources and others; (f) conversations with other FBI agents; and (g) courtauthorized wiretaps on a telephone subscribed to a hedge fund

(the "Hedge Fund Landline"), over which certain wire communications were intercepted between on or about October 15, 2008, and February 4, 2009. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions and statements of and conversations with others are reported herein, they are reported in substance and in part. Where figures, calculations, and dates are set forth herein, they are approximate.

Relevant Entities and Individuals

- 10. Based on my review of documents obtained from public sources, my conversations with confidential sources, and my review of consensually monitored recordings, I have learned that at all times relevant to this Complaint certain individuals were employed by an "expert networking" firm ("the Firm"), and the Firm maintained offices in, among other places, New York, New York.
- 11. Based on my review of documents obtained from public sources, my conversations with confidential sources, and my review of consensually monitored recordings, I have learned that at all times relevant to this Complaint, DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, was employed by the Firm and, among other duties, served as a liaison for the Firm to consultants and sources of information in Asia, who were generally employees of technology companies.
- 12. Based on my review of documents obtained from public sources, and from statements I have obtained during interviews with CC-1, I have learned that at all times relevant to this Complaint CC-1 worked for the Tech Company. In addition, at all times relevant to this Complaint the stock of the Tech Company that employed CC-1 was listed on the New York Stock Exchange in New York, New York. Furthermore, at all times relevant to this Complaint the Tech Company had established Tech Company policies prohibiting the unauthorized disclosure of the Tech Company's confidential information.
- 13. At all times relevant to this Complaint, Richard Choo-Beng Lee ("Lee" or "CW-1") was an individual who, while working at a hedge fund, executed securities transactions based on material, nonpublic information obtained in breach of

fiduciary and other duties. Lee has entered a guilty plea pursuant to a cooperation agreement with the Government to charges of conspiracy and securities fraud in connection with this conduct. Lee has been cooperating with the Government since in or about April 2009 in the hope of receiving a reduced sentence. The information Lee has provided to this investigation has proven to be reliable and has been corroborated by, among other things, audio recordings, phone records, and trading records.

- 14. Based on my review of documents obtained from public sources, I have learned that at all times relevant to this Complaint, Atheros Communications, Inc. ("Atheros") was a technology company headquartered in California and listed on the NASDAQ stock exchange (ticker symbol: ATHR) in New York, New York. Furthermore, at all times relevant to this Complaint Atheros had established policies prohibiting the unauthorized disclosure of the Atheros's confidential information.
- 15. Based on my review of documents obtained from public sources, I have learned that at all times relevant to this Complaint Broadcom Corporation ("Broadcom") was a technology company headquartered in California and listed on the NASDAQ stock exchange (ticker symbol: BRCM) in New York, New York. Furthermore, at all times relevant to this Complaint Broadcom had established policies prohibiting the unauthorized disclosure of the Broadcom's confidential information.
- 16. Based on my review of documents obtained from public sources, I have learned that at all times relevant to this Complaint Sierra Wireless, Inc. ("Sierra Wireless") was a technology company headquartered in Canada and listed on the NASDAQ stock exchange (ticker symbol: SWIR) in New York, New York. Furthermore, at all times relevant to this Complaint Sierra Wireless had established policies prohibiting the unauthorized disclosure of the Sierra Wireless' confidential information.

General Overview

17. Based on my review of publicly available reports and publications, including my review of the Firm's internet website and other records provided by the Firm to law enforcement agents, as well as from my training and experience, I have learned that at all times relevant to this Complaint the

Firm was an "expert networking" firm that advertised itself as an "independent investment research firm that provides institutional money managers and analysts with market intelligence," through a "Global Advisory Team of Experts." The Firm advertised that its team of consultants, "have real-world experience in industries such as healthcare, technology, media, telecommunications, retail, manufacturing, energy and aerospace." The Firm stated that its consultants "speak one-onone with [Firm] clients to provide up-to-the-minute intelligence on trends, issues, regulations and dynamics affecting a particular company, product or industry." The Firm advertised that it "works closely with clients to pinpoint their research objectives, map out factors affecting the targeted company's success and determine which experts are most qualified to provide relevant data points and insights." The Firm further explained on its website that "[w] hen a client requests a meeting with a specific expert, [the Firm] vets the expert for conflicts of interest, regulatory compliance and availability," and then the Firm "schedules a one-on-one phone consultation," or "private face-to-face meetings," with the client.

- 18. Based on my review of the Firm's internet website, I have learned that the Firm further stated that, "Experts are explicitly instructed to decline to comment on subjects that represent information that is confidential or proprietary to the organizations they are affiliated with. At no point are expert consultants permitted to breach any agreement with their employers and are required to keep in confidence proprietary information acquired by them. They are forbidden to disclose to [the Firm] or to any of its customers or partners any material, non-public, confidential or proprietary information belonging to any previous or current employers or others."
- 19. Based on my conversations with Lee and others who have used the Firm's services, as well as my review of bank records and consensually recorded conversations, I have learned that the Firm provides its clients (including a significant client base of hedge funds) with access to its network of

Based on my review of publicly available information, records obtained from the Firm, and conversations with cooperating sources, I have learned that the Firm's main office is located in Mountain View, California, and that the Firm maintains additional offices in New York, New York, and San Francisco, California.

consultants using a combination of "subscription-based" or "transaction-based" fees. Consultants can earn hundreds of dollars per hour or per call from the Firm for their consultations with Firm clients, and Firm clients often pay the Firm tens of thousands of dollars annually for access to the Firm's consultant network and services. In addition to receiving payments for its services in traditional "hard dollars" (such as payments made in cash or by check), sometimes the Firm enters into arrangements with its clients so that it receives payments for its services in "soft dollars." "Soft dollar" payments occur when a the Firm client causes its trading activity to be directed through the Firm's designated brokerdealer, so that commissions or fees from the executed trading activity of the client satisfy the payment for the Firm's services.

As set forth in more detail below, based on my review of consensually recorded conversations between Lee and Firm employees, and consensually recorded conversations between Lee and DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, my review of records provided by the Firm, my conversations with Lee, and my personal knowledge of the investigation, there is probable cause to believe that CHU promotes the Firm's consultation services by arranging for Firm consultants to provide material, nonpublic information regarding certain public companies' releases of significant financial information or other market-moving events (the "Inside Information") for the purpose of executing profitable securities transactions, where such Inside Information has been disclosed by individuals in violation of their fiduciary and other duties to their employers. Based on my training and experience I know that learning Inside Information, including, as set forth below, favorable information about a company's revenue estimate, before that information is disclosed to the public can be advantageous for a trader to purchase stock based on that information.

Lee's Relationship With The Firm

- 21. From my conversations with Lee and others, I have learned the following information:
- a. Prior to the commencement of his cooperation with law enforcement in this investigation, Lee co-managed a hedge fund (the "Hedge Fund").

- b. During Lee's employment with the Hedge Fund, the Hedge Fund had been a client of the Firm in or about late 2008 and early 2009. During this time period, Hedge Fund employees contacted a number of Firm consultants who, in addition to being paid by the Firm for their consulting services, worked at publicly-traded companies.
- c. The Hedge Fund's practice was to have its employees call a Firm consultant before the consultant's company was expected to release its quarterly earnings, in part to obtain Inside Information. For example, Lee and other employees at the Hedge Fund obtained Inside Information from Firm consultants who worked at public companies at the same time.
- d. During this period of time, DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, established a client relationship on behalf of the Firm with Lee and the Hedge Fund. In addition, at an industry conference in Las Vegas, Nevada, in or about January 2009, CHU introduced one of the Firm's consultants from Taiwan to Lee. CC-1 was one of the consultants that Lee also met at the conference.
- e. Between in or about late 2008 and in or about early January 2009, the Hedge Fund directed its prime broker (located in New York, New York) to send soft dollar payments to the Firm for access to its consultant network and services.

Statements Made by DON CHING TRANG CHU and Others to Lee About the Firm's Expert Network and Inside Information

22. In or about June 2009, at my direction, Lee began communicating with DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, as well as other Firm officers, employees, and consultants. (As explained above, Lee had previously-established business relationships with CHU, CC-1, and others connected to the Firm before Lee began cooperating with law enforcement agents in this investigation.) Lee and CHU communicated by email, as well as by telephone and in person. Unless otherwise noted, the email, telephone, and in-person communications involving Lee, CHU, CC-1, and other Firm employees as described below were recorded. Telephone calls

In certain instances, I have included (in brackets "[]") my interpretation of certain abbreviations, words, and

placed by Lee to CHU between on or about July 14, 2009 and August 28, 2009, were routed through the FBI's recording facility located at 26 Federal Plaza in New York, New York. Lee was not in the state of New York when he placed these telephone calls to CHU.

CHU Provides Atheros Information To Lee

- 23. Based on my review of emails and recordings between DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and Lee, I believe that between on or about June 19, 2009, and on or about July 14, 2009, CHU provided Atheros Inside Information to Lee. I have reviewed the Code of Ethics and Business Conduct for Atheros Employees, Officers and Directors, and I have learned that providing this information was a violation of Atheros policy.
- On or about June 19, 2009, at approximately a. 6:52 a.m., 3 CHU sent Lee an email message. The subject line of the email message stated: "Just in " The message stated: "ATHR [Atheros]: Q2 [second quarter] better than expected, over 105M. GM [gross margins] ok. Q3 [third quarter] internal target at 123M [million dollars], guidance pending ?115 [million dollars] or so? Will be aggressive in the pc/nb [personal computer/notebook] ASP [average sales price] to stop competitors. Hopes to maintain GM on (1) Nintendo shipment back in and (2) new 65 nm 11n chip[.] Q4 [fourth quarter] likely has GM under pressure with ASP expected even bloodier. Have fun!" From my involvement in this investigation, including my discussions with Lee, my review of publicly available reports, and my training and experience, I believe that CHU in this email was providing Inside Information about Atheros. I also know that the kind of information being disclosed in this message, including revenue and gross margin information, is not publicly disclosed prior to announcements by the company. I believe

phrases used in the recorded communications quoted herein, and I have used ellipses (". . .") to denote where I have omitted other recorded words, phrases, or other statements made within the passages quoted herein. These interpretations are based on my training, experience, my conversations with CW-1, and my review of publicly available information.

Unless otherwise stated, all times are Eastern Standard Time.

that, at the time of this email message, Atheros had not yet reported results for its fiscal quarter ending in June 2009 (or, "Q2"), and that it was expected to do so after the close of the market on July 21, 2009. I have also reviewed CHU's cellular telephone call data, and I have learned that on or about June 18, 2009, at approximately 7:35 a.m., there was a 2-minute call between CHU and a person utilizing a Taiwanese telephone number.

b. On or about July 14, 2009, at approximately 11:57 a.m., CHU, left a voicemail message for Lee. In that message, CHU told Lee that he wanted to provide Lee with "some update on Atheros, and, ah, maybe, ah, some part of a PC [personal computer]." Later in the voicemail message, CHU stated, "okay on Atheros, ah, since, the last update's still good. Uh, you know, Q2 definitely over 105 depends on how they going to guide it. Margin on Q2's good." Based on my review of Atheros's internet website and my training and experience, I believe that, at the time of this voicemail, Atheros had not yet reported results for its fiscal quarter ending in June 2009 (or, "Q2"), and that it was expected to do so after the close of the market on July 21, 2009, or approximately seven days after the time of CHU's call with Lee. I further believe that, in addition to other information, CHU provided Lee with a second quarter revenue number of over 105 million dollars, depending on how upper management at Atheros decided to mark and finalize their accounting for the quarter.

CHU Facilitates Consultation Between CC-1 and Lee

- 24. Based on my review of emails and recordings between DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and Lee, I believe that between on or about July 20, 2009, and on or about July 21, 2009, CHU facilitated a consultation between CC-1 and Lee.
- a. On or about July 20, 2009, at approximately 4:58 p.m., CHU sent an email message to a Firm employee ("Firm Employee-1") and Lee. In that message, CHU wrote the following text to Firm Employee-1: "Hi [Firm Employee-1], Could we (or someone) help [Lee] of [the Hedge Fund] for a call with [CC-1](?) . . . It's kind of urgent so needs to be done asap."
- b. On or about July 20, 2009, at approximately 5:00 p.m., Firm Employee-1 sent an email message to Lee and another Firm employee ("Firm Employee-2"), with "carbon copies"

of the email message going to a third Firm employee ("Firm Employee-3") and CHU. In that message, Firm Employee-1 asked Firm Employee-2 to schedule a consultation call between Lee and CC-1. Firm Employee-1 also told Lee to "Work with [Firm Employee-2] on the logistics," and stated that "[CC-1] is usually very responsive."

c. On or about July 21, 2009, at approximately 5:19 a.m., Firm Employee-2 sent an email to Lee, with "carbon copies" going to CHU, Firm Employee-1, and Firm Employee-3. In that message, Firm Employee-2 set up a consultation call between Lee and CC-1 for July 21, 2009, from 9:00 a.m. to 11:00 a.m., Pacific Standard Time. The message also included a short description of the background of CC-1.

CC-1 Provides Inside Information To Lee

- 25. Based on my review of emails and consensually monitored recordings between CC-1, Firm Employees, and Lee, I believe that on or about July 21, 2009, CC-1 provided Inside Information regarding the Tech Company to Lee.
- On or about July 21, 2009, at approximately a. 12:07 p.m., Lee placed a call to CC-1. After initially greeting each other and re-introducing themselves, Lee asked CC-1 for "a quick rundown on, on how you think things are shaping up for [the Tech Company]. As you know they're, they're reporting [quarterly earnings] tonight. . . . And how [unintelligible] looking, looking going forward as well as, you know how was last quarter." In response, and throughout much of the call, CC-1 provided Lee with revenue numbers, average sales prices, unit sales for different product lines, gross margin figures, and revenue forecasts for the Tech Company. Based on my training and experience, and based on my conversations with Lee and other witnesses who are cooperating with this investigation, I believe that information provided by CC-1 to Lee was Inside Information. Furthermore, I believe that, at the time of this telephone call, the Tech Company had not yet reported results for its second fiscal quarter of 2009, and that it was expected to do so after the close of the market on July 21, 2009.
- b. On or about July 21, 2009, at approximately 2:45 p.m., Lee wrote an email message to Firm Employee-1. In that message, Lee thanked Firm Employee-1 for setting up the call with CC-1. Lee also mentioned that he was, "not in a

position to send trades to [the Firm] to soft dollar the cost of today's call per our previous arrangement. I feel that I may be taking undue advantage of you and Don Chu's good graces so I am happy to reimburse you for today's call out of my own pocket; please let me know how to arrange this. Separately, our analysts at [the Hedge Fund] spoke highly of [CC-1] and about the depth of his knowledge about the industry and his company. And even though my previous interactions with [CC-1] have been limited, he did not disappoint today. Are there any other experts on your team with whom I should speak with who are of the same caliber as [CC-1]?" Approximately 3 minutes later, Firm Employee-1 replied to Lee by email, writing in the message: "Do not worry about paying for [CC-1], [the Firm] will pay him. You can still access your portal - I will send you a link. [Firm Employee-3] will work with you. Please continue to place calls (we have several mechanisms in place to enable folks who are in similar situations as yourself, to call experts and use the portal, while trying to maximize value to the Firm and yourself)."4

- c. On or about July 21, 2009, at approximately 2:23 p.m., Lee sent an email to Firm Employee-1, with a "carbon copy" sent to Firm Employee-3. In that email, Lee thanked Firm Employee-1 for his assistance and asked if it would be okay to contact Firm Employee-3 directly to set up calls with Firm experts. Towards the end of the message, Lee also wrote, "Given that we are in the thick of earnings reports, I am somewhat anxious to get started ASAP." At approximately 2:36 p.m., Firm Employee-3 sent Lee and Firm Employee-1 an email message that stated that Firm Employee-3 would obtain login access for Lee to the Firm's web portal.
- d. On or about July 21, 2009, at approximately 5:47 p.m., Lee called Firm Employee-3 on his office telephone line. During the call, Lee stated: "You guys have been great, I uh, I had a call with [CC-1] early this morning and he was very good. He's ah, his revenue number, his estimate was spot on." Moments later, Firm Employee-3 responded, "Yeah, he's well, he's one of our, uh, I guess, more liked guys. . . .

As part of its services, the Firm allows its clients to access its internet "portal" -- a portion of its internet website where the Firm provides information about its consultant network. Access to the Firm's portal is exclusive to clients of the Firm.

That's what you try to get into, but anyway . . . No, I just yeah, I was just gonna say he is one of our, you know, top guys, who's been known as being fairly accurate. [CC-1] and [another Firm expert]."

CHU's Statements To Lee Regarding The Inside Information Provided By CC-1, And Facilitating Additional Consultations

- 26. Based on my review of emails and consensually monitored recordings between DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and Lee, I believe that between on or about August 4, 2009, and on or about August 28, 2009, CHU made statements to Lee regarding the Inside Information previously provided by CC-1 and facilitated additional consultations with Firm consultants for Lee.
- On or about August 4, 2009, CHU met with Lee in person. During that meeting, CHU asked Lee when Lee was going to Asia, and Lee replied that Lee was going in September and noted that was just before expected earnings announcements. CHU told Lee that CHU would set up more meetings for Lee during his trip, and Lee thought that CHU's best contact was an employee for Sierra Wireless ("the Sierra Wireless Employee"). CHU then told Lee that he had a few good contacts, including a Broadcom employee based in Asia (the "Broadcom Employee") and another employee at Broadcom who were very good. CHU told Lee that he thought the Broadcom Employee was better than the second person, and explained that the Broadcom Employee was a directorlevel employee at Broadcom and in charge of greater China for Broadcom. CHU also stated that the Broadcom Employee was relatively new to the Firm and a friend of CHU's. CHU also explained that the Broadcom Employee had been with Broadcom for 10 years and was in charge of all the channels so he saw the numbers for Broadcom. Later during the meeting, Lee mentioned to CHU that Lee was surprised that CC-1, "gave me the number last quarter, it's like on the spot." CHU replied, "On the spot. All depends on the person. It, some guys willing to talk, some are not." Moments later, Lee asked whether "you guys" were "nervous," and CHU replied, "I'm nervous." Lee then asked whether Firm Employee-1 and other Firm employees were nervous as well. CHU indicated to Lee that Lee should be careful because some calls are recorded. CHU said, "Let me tell you the truth. That's why I don't want too [sic] involved in [UI] States, it's dangerous. S.E.C. [the the States. . . . United States Securities and Exchange Commission] is too strong.

In Asia, the S.E.C. can't do too much there." Later, CHU told Lee, "In Asia, there, nobody cares. It's difficult too, and be careful." CHU then explained a method of electronic communication to Lee that CHU believed could not be detected by law enforcement. Referring to that particular method, CHU stated, "There's no, no, no, no copy. If you, it's better than personal email. . . . There's no copy saved in the server. Even personal email, there is a copy. . . . So, [UI] just talk. Do, don't, don't put it down in writing. Dangerous."

- On or about August 10, 2009, at b. approximately 12:39 p.m., Lee sent an email message to CHU. the message, Lee thanked CHU for meeting Lee while CHU was in the San Francisco Bay area and mentioned that Lee was thinking of travelling to Taiwan at the end of September 2009, "to do some end of quarter checks." Lee told CHU in the message that he was hoping CHU could set up meetings with "some of the experts you mentioned in our last meeting, like [a Broadcom employee] and your two Atheros contacts? As you know, I am not in a position to pay [the Firm] directly through trades but perhaps I can buy your friends a good meal ;). . . or perhaps compensate them some other way?" Later that night, at approximately 11:25 p.m., CHU sent Lee an email message in reply, in which he stated: "It's my pleasure to assist you. Certainly will set up these meetings for you while you come over then. As always, hope to assist you to make \$\$ in the Market."
- On or about August 28, 2009, at approximately 8:48 p.m., Lee placed a call to CHU. Lee stated to CHU: "I was trying to get a hold of you prior to the Marvell earnings. I know they reported tonight. I was trying to see, if I could, if you could set me up with [a specifically named individual] on the telephone. . . . Now, now, you were telling me last time that [same individual] gets, uh, top line revenues, right?" CHU asked, "Uh, [same first name]?" Lee then stated, "You was telling me last time that [same individual] has, has a good read on Marvell and he gets a pretty good picture of top line revenues, right?" And CHU answered, "No, no, no, Broadcom, Broadcom." Lee then said, "Oh, Broadcom, I thought he was Marvell," and CHU confirmed, "Broadcom, yeah. No, no. that's a Broadcom, right. Marvell, we, I, I haven't followed Marvell for a while." Moments later, Lee stated, "I see, I see, I see. But, but [same individual] has a good read on top line revenues, right, for, for Broadcom?" CHU reiterated, "Yes." Lee then asked if it would be okay if Lee called the Broadcom

contact directly, if Lee could not "get hold of" CHU, and CHU responded, "Well, that, that doesn't work. Usually the call set up has to go through the [Firm's] call center. . . Yeah. or, sometimes you know, because, [individual's name] is in Taiwan, so, so, so it's a, it's a, it can be a direct call but has to be notified by [UI]." Lee asked, "But if I have you on the phone with me listening in, is that okay, or no?" CHU answered, "No. That, that doesn't count. Because, because that, the call has to be sent into the system. . . . Otherwise we cannot pay him. . . . So I don't need to be in the call. I usually [sic] not in the call. But it has to be set up through the system. . . . And, and, and after [UI] set up through the system, then you can call him direct." CHU then offered to call the Broadcom contact directly for Lee to ask the questions that Lee wanted to ask. Later during the call, Lee told CHU that Lee did not want to discuss this information over email because it was "sensitive stuff." CHU replied, "yeah, yeah," to Lee.

- 27. During the course of this investigation I have reviewed records provided by the Firm, and I have learned the following information:
- a. In its list of network consultants, the Firm lists 5 consultants that are employed by Atheros. Of these 5 consultants, 1 of these consultants who worked at Atheros until mid-2010 is listed with a Taiwan address. Records regarding payments made to this individual kept by the Firm show that the Firm paid this consultant \$15,260.79 between in or about January 2008 and in or about June 2010.
- b. On or about July 22, 2009, the Firm paid \$700 to CC-1 for two consultation calls that took place on July 21, 2009. Part of the record entry indicates that the payment was for a consultation call to Lee and for a consultation call to another person.
- c. Between in or about January 2008 and in or about March 2010, the Firm paid CC-1 more than \$200,000 for consultation services he provided.
- 28. On or about November 21, 2010, I and other FBI agents approached DON CHING TRANG CHU, a/k/a "Don Chu," the defendant. Among other things, CHU stated, in substance and in part, the following information:

- a. CHU knows that, during meetings in Taiwan with hedge funds, employees of public companies provide revenue numbers, average selling price, and design wins. (From my training and experience I have learned that the term "design wins" indicates that a company has obtained a contract or agreement to have its products utilized by another firm or company, and therefore could present a potential revenue stream for the company in the future.) One of the public company employees that CHU knows provided revenue numbers, average selling price, and design win information was the "Sierra Wireless Employee.
- b. The Sierra Wireless Employee has met in Taiwan with hedge fund clients and had provided Sierra Wireless' revenue numbers, average selling price information, and design wins. CHU knows that the Sierra Wireless Employee has done this because CHU has listened to conversations between the Sierra Wireless Employee and a hedge fund client during a breakfast meeting that CHU attended. The Sierra Wireless Employee is one of CHU's Taiwan contacts.
- c. The Sierra Wireless Employee gets paid \$160 per call with the Firm's clients.
- d. CHU also knows the Broadcom Employee. The Broadcom Employee has met with the founder of a hedge fund based in New York, New York, and CHU stated that the Broadcom Employee "probably gave [the founder of this hedge fund] Broadcom's revenue numbers before Broadcom's quarter end because that is what [the Broadcom Employee] does. When you ask [the Broadcom Employee] for Broadcom's revenue numbers, [the Broadcom Employee] will give it to you."
- e. Lee has met with the Broadcom Employee and the Sierra Wireless Employee in Taiwan. During his meeting with the Broadcom Employee in Taiwan, the Broadcom Employee gave Lee Broadcom's revenue numbers when that information was not yet public.
- f. CHU also stated that Broadcom would not want the Broadcom Employee to share Broadcom's revenue numbers with hedge funds, because, according to CHU, giving out revenue numbers to hedge funds is wrong.
 - g. Firm Employee-1 knows that hedge funds want

revenue numbers from Firm consultants. Certain hedge funds ask Firm consultants about their respective companies' revenue numbers and how their companies will report their earnings numbers prior to their earnings report.

- h. Some Firm consultants will talk about their companies' revenue numbers and some do not. Some of CHU's contacts in Taiwan will provide revenue numbers to hedge funds. Meetings between CHU's contacts and hedge funds occur about 4 to 6 weeks prior to earnings. Sometimes, the meetings occur about 3 weeks before earnings. Setting up meetings between hedge funds and Firm consultants who provide their companies' respective revenue numbers is wrong.
- i. The Firm pays CHU \$6,000.00 per month and covers his expenses.
- j. CHU had plans to leave the United States for Taiwan on or about November 28, 2010.
- 29. From my involvement in this investigation and my review of records provided by the Department of Homeland Security Immigration and Customs Enforcement, I have learned that DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, travels frequently between Taiwan and the United States. For example, between on or about August 26, 2009, and on or about April 8, 2010, CHU made at least 4 roundtrip flights between Asia and the United States.

WHEREFORE, deponent prays that an arrest warrant be issued for DON CHING TRANG CHU, a/k/a "Don Chu," the defendant, and that he be imprisoned or bailed, as the case may be.

B. J. KANG

Special Agent

Federal Bureau of Investigation

Sworn to before me this 23rd day of November, 20

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THE HONORABLE THEODORE (H.) KATZ UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK