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Rajat Gupta

[Rajat] has conducted his life with an admirable sense of purpose and desire to improve the lives of people in trouble around the world. He has devoted his time, energy and talent – with no expectation of personal benefit or gain – to projects that are wholly admirable and worthy of praise.

— Kofi Annan, Secretary General of the United Nations, 1997–2006[1]

On June 15, 2012, Rajat Gupta, former managing director of McKinsey & Company, a director of Goldman Sachs, Proctor & Gamble, and AMR, and a well-known philanthropist, was convicted under securities laws of four criminal felony counts of conspiracy and securities fraud.[2] The allegations that he provided confidential information to a billionaire hedge fund trader and his later conviction shocked his colleagues, friends, and family. Many wondered how a man so widely admired and respected could have made such serious mistakes. Gupta was subsequently sentenced to two years imprisonment, but all the while maintained his innocence as he sought to appeal his conviction.[3]

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Upbringing

Rajat Gupta was born in Calcutta in 1948, at the dawn of India's independence.[4] His father was a professor and journalist, and his mother taught at a Montessori school. When Gupta was five, the family moved to New Delhi as his father helped to start the Delhi edition of the *Hindustan Standard* newspaper.[5]

From an early age Gupta was identified as having extraordinary promise. He was admitted to one of the leading high schools in New Delhi (the Modern School) and ranked 15th in the country in the entrance examination for the highly competitive Indian Institutes of Technology (IIT).[6] When he was 16, his father passed away. Soon after, his mother was diagnosed with heart disease and died two years later. Gupta was thrust into adulthood with significant responsibilities at an early age. He persevered and graduated from IIT New Delhi with a degree in mechanical engineering.[7]

The Move to the U.S. and to Harvard Business School

Upon graduating from IIT, Gupta was offered a job at the prestigious Indian Tobacco Company Limited (later ITC Limited).[8] However, like many young Indians at that time Gupta wanted to go to the United States and thought school offered a promising avenue to do so. He applied and was admitted to Harvard Business School (HBS). He turned down the India Tobacco Company offer, and in the fall of 1971 set off for Boston.[9]

Gupta was one of the youngest student of his HBS class, and only one of three from India. Most of his fellow students had work experience on Wall Street or in the military. Classmate John Carberry recalled, "My immediate impression was what a nice guy this is. There wasn't a cockiness about him. If anything there was a sweetness, a kindness about him—maybe a little naïve but always upbeat, always pleasant."[10] Despite his lack of experience, Gupta thrived at HBS. Carberry marveled: "Rajat constantly just floated above all this [hard work]. We all got the impression that the academic challenges at HBS were not that much of a challenge for him."[11]

Yet at the end of the spring term of his second year, Gupta did not have any job offers. He had had two interviews with McKinsey, but was then advised to "work somewhere else for three or four years."[12] Upon learning this news, one of his professors, Walt Salmon, intervened and called Ron Daniel, the head of McKinsey's New York office and a former classmate, to suggest that the firm reconsider Gupta. Shortly after the call, Gupta was invited back to McKinsey for further interviews and was subsequently offered a job.[13]

The McKinsey Years

After graduating from HBS, Gupta returned to New Delhi to marry Anita Matoo, an electrical engineer whom he first met in the IIT theater and debating clubs when he was a student. The newlyweds rented an apartment near Columbia University, where Anita began studying for a PhD and Gupta began working at McKinsey.[14]

Founded in 1926 by James O. McKinsey, a University of Chicago accounting professor, McKinsey established itself under Marvin Bower's leadership during the 1950s and 1960s as the country's most prestigious management consulting practice. The firm was famed for hiring talented MBAs from leading business schools, providing its clients with high-level strategic consulting advice, and for its "up or out" employment policy where associates were rigorously reviewed and either promoted to junior partner or asked to leave.[15]

Gupta spent almost seven years at McKinsey before being made junior partner in January 1980. The following year, he and his family moved to Copenhagen where he took a position at the McKinsey Scandinavia office, which had yet to make money.[16] Soon after his arrival, Gupta was appointed office manager. By the time he left in 1986, McKinsey Scandinavia had grown from 15 to 125 professionals, expanded into Norway, and had become profitable.[17]

Gupta's next posting was in Chicago. When the office head stepped down, Gupta offered to take on the position and won the job. His successes in Scandinavia and later in Chicago positioned him well within the firm. In 1988, when Fred Gluck was elected managing director, Gupta's name was on the seven-person nominating slate.[18]

Under Gluck's leadership, McKinsey continued to expand, with much of its growth coming internationally. By the time Gluck retired in 1993, 60% of the firm's revenues were from outside the U.S.[19] Given his reputation as a successful office manager and his international experience, Gupta's name was again on the slate of nominees for managing director. In March 1994 he was elected to the position and was subsequently re-elected for a further two terms (through 2003).[20]

Under Gupta's leadership, McKinsey expanded rapidly. It broadened its hiring, targeting graduates of 20 elite schools (up from seven), and began hiring PhDs. New offices were opened in 23 countries, the number of staff doubled to 891 partners and 7,700 consultants (from 425 and 3,300 respectively), and revenues grew from $1.2 billion to $3.4 billion.[21]

The firm became a leader in the emerging practice of advising on outsourcing business services. The revolution in telecommunications provided an opportunity for U.S. companies to outsource work that did not require local know-how to low-cost providers elsewhere. When operational and organization practice leaders pitched the idea, it resonated with Gupta, who encouraged its development by setting up the McKinsey Knowledge Center to help advance the agenda.[22] As a result, McKinsey, like other strategy and operations consulting firms, advised many of its clients to move portions of their business services to India.

The late 1990s also saw the explosion of e-businesses and tech companies. Unlike McKinsey's typical blue-chip clients, these firms were cash poor, but could provide equity to pay for needed consulting advice. But since the days of Marvin Bower, McKinsey's policy had been to accept payment only in cash. Equity payments or earn-outs were frowned on since they created a potential conflict of interest that could lead McKinsey consultants to take a short-term focus (when contingent payoffs would be generated) in advising clients.[23] McKinsey's West Coast technology leaders pushed to change the old policy and allow the firm to compete for the new business. Under Gupta's leadership, a McKinsey strategy committee recommended that up to 50% of a fee could be collected in the form of equity, provided the investment was less than $1 million.[24] In so doing, McKinsey joined the practice of many other firms in accepting equity in lieu of fees. By 2002, the firm had taken equity stakes in more than 150 companies.[25]

Despite McKinsey's financial success during Gupta's tenure, some partners lamented that its rapid growth had caused it to stray from many of its core values. For example, Enron was an important client, its CEO Jeffrey Skilling was a former McKinsey partner, and McKinsey had written about Enron's business model in its *McKinsey Quarterly*.[26] When Enron collapsed, McKinsey was criticized for not recognizing the problems.[27] In addition, like many professional service firms, McKinsey found itself overextended when the dot-com crash took place. Partner compensation fell and the firm became overstaffed when attrition plummeted and more offers than normal were accepted by new MBAs.[28]

In 2003, after completing three terms as managing director, Gupta stepped down from his role as managing partner. He was succeeded by Ian Davis, who was perceived by many partners to be deeply committed to the firm's traditional values of investing in long-term client relationships and in the development of the firm's associates.[29] In retirement, Gupta continued to have an office at the firm, and held the title "senior Partner emeritus." However, his focus shifted.

Philanthropy

Even during his tenure at McKinsey, Gupta was well known for his charitable and volunteer efforts, focused on education and global health.

In 1996, Gupta helped to create the first private business school in India, named the Indian School of Business (ISB).[30] Gupta forged a partnership between ISB and the Kellogg School of Management, and Kumar arranged a similar partnership with the Wharton School.[31] Gupta became the school's first chairman.

Gupta also served on the board of trustees of the University of Chicago, the President's Council at Yale, and advisory boards of various business schools, including Harvard Business School (where he chaired the Dean's Advisory Council), Lauder Institute of Management & International Studies at the Wharton School, MIT Sloan School of Management, Northwestern University's Kellogg School of Management, Tsinghua University School of Economics and Management, and Skolkovo.[32] In 2009, he was elected a Member of the American Academy of Arts and Sciences.

In the healthcare space, Gupta was a board member of a wide range of organizations, many of which focused on solving health problems in the developing world. In 2001, in response to an earthquake that struck India, he cofounded and became co-chairman of the board for the American India Foundation (AIF).[33] AIF was initially created to help victims of the earthquake, but it subsequently became the largest U.S.-based diaspora philanthropy organization focused on India. Gupta became a founding board member and then chairman of the board for the Global Fund to Fight AIDS, Tuberculosis and Malaria, an organization initially funded by a $100 million grant by the Bill & Melinda Gates Foundation.[34] In 2006 he cofounded and was the founding chairman of the Public Health Foundation of India, a public-private partnership to enhance the capabilities of public health care professionals in India. He was chairman of the advisory board and the India AIDS initiative of the Bill & Melinda Gates Foundation as well as its Global Health Initiative until 2011.

Gupta also served on Indian Prime Minister Manmohan Singh's global advisory council, chairing the U.S.-India Business Council from 2002–2005. He acted as Special Assistant to UN Secretary General Kofi Annan for Management Reform in 2005 and became a member of the Foundation Board for the World Economic Forum.[35,36]

Post-McKinsey Ventures

Once Gupta retired from McKinsey in 2007, he was able to serve on public company boards. Over the next seven years he joined several high-profile boards. In 2006 he was appointed to the Goldman Sachs board, in 2007 to the Proctor & Gamble board, and the following year to the board of AMR (the parent of American Airlines).[37]

He also became interested in the world of private equity and hedge funds, seeing the opportunity to create an asset management firm that targeted India. This interest brought him into contact with Raj Rajaratnam, the billionaire founder of the Galleon Group, a New York-based hedge fund management firm. Born in Sri Lanka and educated in English boarding schools, Rajaratnam attended the Wharton School (where he was a classmate of Gupta's colleague and friend Anil Kumar). In 1997, he founded Galleon to invest in technology stocks such as Intel and AMD, and built the fund into a $5 billion giant.[38]

During fundraising for the ISB, Kumar had approached Rajaratnam to contribute to the new school, and Rajaratnam had gifted $1 million.[39] Gupta was impressed by Rajaratnam's generosity, and when he and Bill Clinton were seeking aid for the victims of the Indian earthquake, they approached Rajaratnam. He again generously supported the effort.

Several years later, Gupta and his friend Ravi Trehan approached Rajaratnam for advice and equity capital. Rajaratnam became interested in a proposed venture, Voyager Capital Partners, an investment vehicle that would invest in funds run by Galleon and Trehan's firm, Broadstreet Group. The three founded Voyager in 2007. Rajaratnam put in $40 million for an 80% stake, and Trehan and Gupta invested $5 million each for 10% stakes.[40] After only three months, Voyager had generated a return of 17% for the partners and lucrative management fees for Broadstreet.[41] But after a falling out between Rajaratnam and Trehan, Rajaratnam bought out Trehan's ownership.

In early 2006, Gupta teamed up with Rajaratnam and two other partners to raise $1 billion for a new Indian fund. The four partners planned to invest $130 million of their own money into the venture that would later be called New Silk Road (NSR).[42] Rajaratnam eventually invested $50 million in NSR. Gupta used many of his McKinsey contacts to raise funds for the fledgling venture, and largely through his efforts, $1.3 billion was raised.[43]

Around the same time, Gupta bought out the 10% stake in Voyager that Rajaratnam had acquired from Trehan. As a result of the loan, Gupta now owned 20% of the highly profitable investment firm.[44] In addition, he helped arrange a loan from Rajaratnam to his friend Ramesh Vangal of Katra Finance. However, when Vangal was slow to repay the loan, Rajaratnam took out some of his frustration on Gupta.

In mid-2008, Gupta was approached by Kohlberg Kravis Roberts (KKR) with an offer to join the firm.[45] He notified Goldman Sachs of the offer, and was advised that he would have to step down from the board given the potential conflict of interest, since Goldman competed with KKR in its private equity business. However, this concern was temporarily tabled given the financial crisis, and Goldman's recognition that it would not be bidding on any deals that would compete with KKR over the short term.

The global economic crisis also affected Gupta's investment in Voyager. The fund collapsed and he lost his $10 million investment.[46] However, unbeknownst to Gupta at the time, Rajaratnam had managed to withdraw his funds several months earlier and avoided the losses.

Gupta appreciated that his personal goals were evolving over time and these could present challenges. In response to a student who wanted to hear his attitude toward wealth creation during a visit to Columbia University after stepping down from McKinsey, Gupta offered his frank assessment: "I am probably more materialistic today than I was before and I think money is very seductive. … You have to watch out for it because the more you have it, you get used to comforts, and you get used to, you know, big houses and vacation homes, and going and doing whatever you want, and so it is very seductive. However much you say that you will not fall into the trap of it, you do fall into the trap of it."[47]

Conveying Confidential Information

In 2006, Raj Rajaratnam came to the attention of the Securities and Exchange Commission (SEC) for possible insider trading when his brother Rengan, also an investment manager, was being investigated for insider trading (see **Appendix 2** for a description of insider trading laws). After several years of investigations, which included wiretapping some of his phone calls, the FBI arrested Raj Rajaratnam on October 16, 2009, and charged him with insider trading.[48]

The allegations against Rajaratnam were numerous and covered his trading of several different companies. But one focus of investigation was a series of suspicious trades of Goldman Sachs stock immediately before critical public announcements. Evidence gathered by investigators suggested that Rajat Gupta was the source of the information. As a result, the FBI and SEC began an investigation into Gupta's role, and on October 26, 2011, the U.S. Attorney's Office filed criminal charges against him.[49] In these investigations, McKinsey cooperated with prosecutors and the SEC.[a]

The evidence presented against Gupta included an FBI wiretap of a July 2008 conversation he had had with Rajaratnam, which recorded Rajaratnam asking whether Goldman Sachs was likely to acquire a commercial bank, Gupta's response divulging discussions of a recent Goldman board meeting, Rajaratnam's complaints about receiving too little information from Gupta's McKinsey friend and colleague Anil Kumar in return for the $1 million he was paying him,[b] and discussions about Gupta's future role in Galleon.[c,50] (See **Appendix 1** for excerpts of the July 29, 2008, undercover recording, along with a link to the audio.)

In addition, evidence pointed to Gupta alerting Rajaratnam to Warren Buffett's decision to invest $5 billion to shore up Goldman's capital and send a strong signal of his confidence in the firm following the financial meltdown. Goldman held an emergency conference call meeting of its board to discuss the matter on September 23, 2008. Soon after Gupta hung up on the board conference call, his secretary connected him through to Rajaratnam's office line. After getting off the call, with only minutes left until the close of trading, Rajaratnam urged his colleagues to buy Goldman Sachs stock. In four minutes they purchased 267,200 shares. Less than two hours later the news of Buffett's investment was made public.[51] (See **Appendix 1** for excerpts of the September 24, 2008, undercover recording of Rajaratnam recounting this conversation, along with a link to the audio.)

At the board conference call on October 23, 2008, Lloyd Blankfein, Goldman's CEO, decided to update the board on the firm's performance. Financial analysts were predicting that Goldman would report a profit of $2.76 per share for the fourth quarter. In reality, Blankfein recognized that the firm was going to lose money for the first time since it had gone public in 1999. The board call concluded at

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[a] John Helyar, Carol Hymowitz, and Mehul Srivastava, "Gupta defied McKinsey before SEC action," *Washington Post*, May 21, 2011, https://goo.gl/crGYhD.

[b] Anil Kumar was arrested on October 16, 2009, the same day as Raj Rajaratnam. In January 2010, Kumar pleaded guilty to insider trading charges and testified against Rajaratnam and Gupta at their trials.

[c] Prosecutors in the Rajaratnam case first released the wiretapped conversation on March 15, 2011. On the same day, McKinsey & Co's global partners met in Washington, DC, for their annual conference. Many of the business discussions were put on hold as partners listened to the recorded conversation and what they saw as violations of numerous McKinsey values. See Lorsch and McTague, "McKinsey & Co. – Protecting Its Reputation (A)," HBS Case 415-021 (Boston: Harvard Business School Publishing, October 2014).

4:49 p.m. Twenty-three seconds later, Gupta's assistant again connected him to Rajaratnam's office line. The following morning Rajaratnam sold 150,000 Goldman shares, saving Galleon $3.8 million in losses as Goldman's stock fell from $108.58 to $52 when the news later hit the market.[52] (See **Appendix 1** for excerpts from the October 24, 2008, undercover recording, along with a link to the audio.)

Gupta vigorously denied the claims made against him. First, he argued that he had no incentive to help Rajaratnam, since he was involved in a dispute with him over the losses from his Voyager investment, which had been the subject of his phone calls. Second, and most critically in his defense against the allegations that he engaged in illicit insider trading, Gupta's lawyers pointed out that he did not personally benefit financially from any disclosures to Rajaratnam.

Conviction and Sentencing

On June 15, 2012, the jury found Gupta guilty on three counts of securities fraud and one count of conspiracy (see **Appendix 3** for the jury instructions around the insider trading charges).[53] Judge Jed Rakoff, charged with sentencing Gupta, received more than 200 letters testifying to his character and pleading for leniency.[54] Bill Gates, who had worked with Gupta when he was chair of the Global Fund to Fight AIDS, Tuberculosis and Malaria, wrote:

> Because of his remarkable business background, [Rajat] brought a level of clear-headed thinking and focus on results, all the while remaining a dogged advocate for the world's poor who desperately needed the treatments these funds would support. There was every reason in the world for Rajat to back out of such controversial and time consuming volunteer work, yet he remained steadfastly dedicated to the task. And many millions of people are leading better lives—or are alive at all—thanks to the efforts he so ably supported.[55]

Kofi Annan, Secretary General of the United Nations from 1997–2006, wrote that he had worked on many projects with Gupta, saying, "I came to respect his judgment, and we became good friends."[56] Ajit Jain, a leading Berkshire Hathaway executive and potential successor to Buffett, wrote that the impression of Gupta at his trial of someone who abused his position is "wholly inconsistent with the character of the man I know."[57]

Gupta's wife, Anita, wrote: "He invested with anybody who came to him or was sent to him by friends without asking too many questions, much to our financial advisor's dismay. He could never imagine his friends or business associates could be involved in unlawful activities or would try to cheat him . . . . During the present crisis, a lot of his 'good friends' have disappeared or cooperated against him in the hope of getting leniency and some who could be helpful did not step forward."[58]

Observers found it difficult to understand why someone of Gupta's standing, business experience, and compassion for the less fortunate would make such seemingly fundamental mistakes. His personal fortune, estimated at around $80 million, and his personal reputation were substantial. Even U.S. District Judge Rakoff, who presided over his case, recognized the contradictions as he sought to determine an appropriate sentence. In his summary comment, Judge Rakoff explained:

> The Court can say without exaggeration that it has never encountered a defendant whose prior history suggests such an extraordinary devotion, not only to humanity writ large, but also to individual human beings in their times of need. . . .
>
> But the history of this country and the world, I'm afraid, is full of good men who do bad things. When one looks at the nature and circumstances of the offense, the picture

darkens considerably. . . . His criminal acts represented the very antithesis of the values he had previously embodied. So how does a court balance these polar extremes? . . .

Rajat K. Gupta is therefore sentenced to 24 months' imprisonment, concurrent on all counts, to be followed by one year of supervised release. The otherwise mandatory forfeiture has been waived by the Government, but Court imposes a fine in the sum of $5,000,000.[59]

Appendix 1: Wire Recordings[60]

Recording July 29, 2008[d]

On July 29, 2008, from his Connecticut home, Rajaratnam calls Gupta. Rajaratnam tells Gupta the reason for his call is because he is meeting with Gary Cohen, president of Goldman Sachs, in a few days. "And there's a rumor that Goldman might look to buy a commercial bank. Have you heard anything along that line?" Gupta describes a recent "big discussion" at a Goldman Sachs board meeting on "whether we buy a commercial bank." After discussing what he feels the firm should invest in, Gupta tells Rajaratnam, "They are an opportunistic group, so if Wachovia was a good deal . . . it's quite conceivable they'd come and say 'let's go buy Wachovia.'" Rajaratnam pushes for more information: "Or even AIG, right?" Gupta responds, "Or even AIG, yeah. AIG, it was definitely in the discussion mix."

Gupta also learns of current McKinsey partner Anil Kumar's $1 million in compensation from Rajaratnam, who says, "I'm all for people who work hard and who need to be compensated, but you can't just keep on giving, you know. And honestly, [I'm] giving him $1 million a year for doing literally nothing." Rajaratnam continues to describe his displeasure with Kumar: "He coordinated those telephone meetings, right, and that's about it. I put in $50 million bucks . . . For the last three or four or four or five years, I've given him a million bucks a year, right. After taxes, offshore, cash." After telling Gupta how Kumar asked for even more money, Rajaratnam says, "I felt like he was putting a stake through my stomach because instead of saying thank you for giving me $5 million dollars . . ."

As the conversation dies down, Rajaratnam tells Gupta, "Keep your eyes and your ears open, and if you hear anything that you think may be interesting, and I will check it out and see what's in the market." Gupta asks Rajaratnam if he "has two more minutes." He asks Rajaratnam for his "straight opinion" on whether or not Gupta should take the KKR offer: "Do you really feel in the gut that given everything it's a good thing to do?" The two go on to discuss Gupta's role in Galleon International going forward, and Rajaratnam ends the conversation by telling Gupta, "On the KKR, I would do it in a heartbeat."

Recording September 24, 2008[e]

On September 24, 2008, Rajaratnam calls Ian Horowitz, his trader at Galleon. Rajaratnam describes his efforts to purchase shares in Goldman Sachs two minutes before the stock market closed at 4 p.m., after receiving a call with news, alluding to the call that he had with Gupta.

Rajaratnam recounts in the undercover audio recording with Horowitz, "I got a call at 3:58, right?" Rajaratnam notes in reference to his prior day's conversation with Gupta about the Goldman Sachs board meeting: "Saying something good might happen to Goldman, right?" Rajaratnam goes on to say that the first Galleon trader he called was not immediately available to complete the purchase, "So I told Ananth to buy some, he was fucking around, he can't, you know. So I went to Gary and just buy me, right? Because you were not there." Rajaratnam then instructs Horowitz to purchase more shares: "I want to go for two million shares of Goldman Sachs." Horowitz agrees and tells Rajaratnam, "Look,

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[d] Federal Bureau of Investigation, "Galleon Wiretap Rajat Gupta-Raj Rajaratnam," United States Attorney's Office, Southern District of New York, July 29, 2008, audio file, Wikimedia Commons,

https://commons.wikimedia.org/wiki/File:GalleonWiretap_RajatGupta-RajRajaratnam.ogg , accessed March 2021.

[e] "Undercover Audio Reveals Rajaratnam's Frantic Calls After Goldman-Buffett Tip," CNBC.com and Wires, March 31, 2011, http://www.cnbc.com/id/42361159 (first recording on the page).

I get the sense this is a deal that is going pretty well. I mean, they just upsized it from two-and-a-half to five billion. To me, the Buffett thing is somewhat of a game changer."

Recording October 24, 2008[f]

On October 24, 2008, Rajaratnam returns a call to David Lau, head of Galleon's Singapore office. Lau asks Rajaratnam to "give me a sign of the pulse because we're quite shocked overseas." Rajaratnam indicates that he doesn't feel the market is too bad: "Today there is reasonable commerce in the market. The market is only down 2 or 3 percent, right." He then describes information he received from a Goldman insider: "I heard yesterday from somebody who's on the board of Goldman Sachs that they are gonna lose $2 per share. The Street has them making $2.50 . . . I don't think that's built into the Goldman Sachs stock price . . . I'm gonna whack it you know."[61]

[f] Katya Wachtel, "AUDIO: Listen To Raj Tell One Of His Galleon Managers That He Just Got A Tip About Goldman Quarterly Losses From A Board Member," *Business Insider*, March 31, 2011, http://www.businessinsider.com/raj-rajaratnam-wiretaps-galleon-trial-goldman-sachs-2011-3.

Appendix 2: Illicit Insider Trading

When executives, members of a board, or employees trade in a firm's stock, they engage in insider trading. In many instances, such trading is legal as long as it is reported to the Securities and Exchange Commission. However, some forms of insider trading are illicit. Although there is not a specific law in the United States prescribing what forms of insider trading are illegal, guidance for which types of trading regulators might seek to sanction individuals comes from a series of court interpretations of provisions in the Securities Exchange Act of 1934. Sanctions for illicit trading may include civil and/or criminal penalties depending on the case, evidence of misconduct, and prosecutorial discretion.

Regulatory scrutiny around potential illegal trading arises in two circumstances. First, a violation may occur if an individual with a fiduciary relationship with a firm (e.g., board member, executive, employee, etc.) is in possession of material, nonpublic information, and trades on a security of that firm. Second, if individuals misappropriate information from a firm and provide that to others ("tipping") or individuals are provided ("tippees") misappropriated information about a firm that they then trade on, they may face sanctions for illegal insider trading. The appendix describing the jury instructions in Gupta's case provides additional insight into the nature of illicit insider trading.

The Securities and Exchange Commission describes various instances in which it and other regulators have taken action against individuals for illicit insider trading.

Corporate officers, directors, and employees who traded the corporation's securities after learning of significant, confidential corporate developments.

Friends, business associates, family members, and other "tippees" of such officers, directors, and employees, who traded the securities after receiving such information.

Employees of law, banking, brokerage and printing firms who were given such information to provide services to the corporation whose securities they traded.

Government employees who learned of such information because of their employment by the government.[62]

Appendix 3: Jury Instructions

Prior to deliberating, the jury was given instructions about the charges faced Gupta. Below are the amended instructions given to jurors deciding whether Gupta engaged in securities fraud.

Each of these counts charges Mr. Gupta with unlawfully disclosing to Raj Rajaratnam certain "inside information" that Mr. Rajaratnam or his associates then used in connection with the purchase or sale of stocks.

Specifically, Count 2 charges Mr. Gupta with unlawfully disclosing to Mr. Rajaratnam, on or about March 12, 2007, material nonpublic information regarding Goldman Sachs's first quarter earnings, which Mr. Rajaratnam then used in connection with the purchase of at least 350,000 shares of Goldman Sachs stock on March 12, 2007.

Counts 3 and 4 charge Mr. Gupta with unlawfully disclosing to Mr. Rajaratnam, on or about September 23, 2008, material nonpublic information regarding Warren Buffett's $5 billion investment in Goldman Sachs, which Mr. Rajaratnam then used in connection with the purchases on September 23, 2008, of, respectively, 150,000 shares (Count 3) and 67,200 shares (Count 4) of Goldman Sachs stock.

Count 5 charges Mr. Gupta with unlawfully disclosing to Mr. Rajaratnam, on or about October 23, 2008, material nonpublic information regarding Goldman Sachs's having lost money for the quarter ending November 28, 2008, which Mr. Rajaratnam then used in connection with the sale of approximately 150,000 shares of Goldman Sachs stock on October 24, 2008…

As to any such count that you are considering, the Government, in order to convict on that count, must prove each of the following three elements beyond a reasonable doubt:

First, that on or about the date alleged, Mr. Gupta engaged in an "insider trading" scheme, in that, in anticipation of receiving at least some modest benefit in return, he provided to Mr. Rajaratnam the material non-public information specified in the count you are considering, with the expectation that Mr. Rajaratnam or his associates would trade on that information, as they then did in the manner specified in the count.

Second, that when he engaged in this scheme, Mr. Gupta acted knowingly, willfully, and with an intent to defraud the company specified in the given count you are considering, i.e., Goldman Sachs…

Third, that in furtherance of the scheme, there occurred at least one use of any means or instrument of transportation or communication in interstate commerce, or the use of the mails, or the use of any facility of any national securities exchange.

Let me say a few words about each of these elements:

As to the first element, Mr. Gupta, as a director of Goldman Sachs and Procter & Gamble, had a legal duty not to disclose nonpublic information about either company to anyone outside the company unless authorized to do so. This nonpublic or "confidential" information is called "inside information." Such "inside information" is "material" if a reasonable investor would consider it important in deciding whether to buy or sell the stock of the company as to which the information relates.

Therefore, in order to establish the first element of any given substantive count that you are considering, the Government must prove beyond a reasonable doubt that on or about the date specified in that count, (a) Mr. Gupta disclosed to Mr. Rajaratnam the information specified in that count and that is was material nonpublic information; (b) Mr. Gupta anticipated that Mr. Rajaratnam or others at Galleon would trade on the basis of this information and that they then did so by buying or selling the shares specified in the count on the basis of the inside information; and (c) Mr. Gupta, in return for providing this information, anticipated receiving some personal benefit. As to the actual trade specified in each count, the trade would be "on the basis of the inside information" if the information was a factor in the trading decision. As to the "benefit" that the defendant anticipated receiving, the benefit does not need to be financial or to be tangible in nature; it could include, for example, maintaining a good relationship with a frequent business partner, or obtaining future financial benefits.

As to the second element, the Government must prove beyond a reasonable doubt that Mr. Gupta undertook the insider trading scheme set forth in a given count "knowingly" (that is, consciously and voluntarily, rather than by mistake or accident or mere inadvertence), "willfully" (that is, deliberately and with a bad purpose), and with an "intent to defraud" the company in question (that is, with an intent to deprive the company in question of the confidentiality of its information).

Since the Government must prove an intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of substantive securities fraud (as well as the conspiracy charge described later). That is, the law is not violated if a defendant held an honest belief that his actions were proper and not in furtherance of any unlawful scheme. However, the defendant does not bear the burden of proving good faith; it remains at all times the Government's burden to prove beyond a reasonable doubt that a defendant acted knowingly, willfully, and with an intent to defraud.

As to the third element, the Government must prove beyond a reasonable doubt that, as to any given count you are considering, either the disclosure of the information or the consequent trading based on that disclosure involved at least one use of an instrumentality of interstate commerce, such as an interstate telephone call, or a use of the mails, or a use of a facility of a national securities exchange, such as a stock trade made on the New York Stock Exchange.[63]

Endnotes

Cover photo: REUTERS/Andrew Burton.

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[4] A. Raghavan, *The Billionaire's Apprentice: The Rise of the Indian-American Elite and the Fall of the Galleon Hedge Fund* (New York: Business Plus, 2013), p. 18.

[5] D. McDonald, *The Firm: The Story of McKinsey and Its Secret Influence on American Business* (New York: Simon & Schuster, 2013), p. 224.

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[8] Ibid., p. 45.

[9] Ibid., p. 56.

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[11] Ibid., p. 59.

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[21] J. Lorsch and E. McTague, "McKinsey & Co. – Protecting its Reputation (A)," HBS Case 415-021 (Boston: Harvard Business School Publishing, October 2014), p. 3.

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[23] J. Lorsch and E. McTague, "McKinsey & Co.," p. 3.

[24] A. Raghavan, *The Billionaire's Apprentice*, p. 186.

[25] D. McDonald, *The Firm*, p. 265.

[26] Ibid., p. 243.

[27] J. Lorsch and E. McTague, "McKinsey & Co.," p. 3.

[28] D. McDonald, *The Firm*, p. 269.

[29] J. Lorsch and E. McTague, "McKinsey & Co.," p. 3.

[30] A. Raghavan, *The Billionaire's Apprentice*, p. 183.

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