

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
100 F Street, N.E.
Washington D.C. 20549-6030

Plaintiff,

v.

HANS WAGNER,
21 Sjoetullsbacken
11525 Stockholm
Sweden

Defendant.

COMPLAINT

Plaintiff Securities and Exchange Commission (the
"Commission" or "SEC") alleges as follows:

NATURE OF THE ACTION

1. This case involves insider trading in the securities of msystems Ltd. in advance of a merger announcement. The defendant, Hans Wagner, was a director of msystems during the relevant period. Wagner learned about preliminary merger negotiations on June 7, 2006 and bought 200,000 shares of msystems common stock on June 8 for \$27.77 per share. msystems announced the merger the

afternoon of July 30. The closing price of msystems stock increased \$4.21 or 13.2% to \$36 the next day.

2. In recognition of his ethical obligations as a board member of a publicly traded company, Wagner, on his own volition, contacted the staff of the SEC shortly thereafter and offered to disgorge his trading profits.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

DEFENDANT

4. Hans Wagner ("Wagner"), age 76, was a director of msystems from November 2002 until the merger was completed in November 2006. Wagner lives in Stockholm, Sweden.

RELEVANT ENTITY

5. msystems Ltd. ("mystems" or "company") is a publicly-traded Israeli corporation headquartered in Kfar Saba, Israel. msystems produces flash disk data storage devices for Internet appliances and network infrastructure equipment. Prior to the merger, msystems had a class of

securities registered with the Commission pursuant to Section 12(g) of the Exchange Act, and the company's common stock traded on the Nasdaq Stock Market during the relevant period.

SUBSTANTIVE ALLEGATIONS

Prior Merger Overtures

6. From time to time prior to 2006, Eli Harari, chief executive officer and chairman of SanDisk Corporation, proposed to Dov Moran, chief executive officer and then chairman of msystems, that they explore a business combination of SanDisk and msystems. These included proposals from Harari in May 2001 and August 2003. None of those proposals developed into substantive negotiations.

Preliminary Merger Negotiations

7. On May 25, 2006 msystems announced that it was launching a public offering of 8,700,000 shares. On May 27, Harari contacted Moran by telephone and proposed that they pursue discussions regarding a possible business combination. Moran informed Harari that, in light of msystems' pending public offering, msystems would prefer not to pursue such discussions at that time.

8. On June 1, 2006, msystems announced that, in light of the commencement of an internal review of prior stock option grants, msystems would not be proceeding with

its previously announced public offering. Later on June 1, 2006 Moran and Harari spoke by telephone and they discussed SanDisk's interest in pursuing a possible business combination with msystems.

9. Unbeknownst to Wagner, on June 4, 2006 Harari contacted Moran and reiterated SanDisk's interest in pursuing a possible transaction. Harari suggested that they each engage investment bankers to discuss the valuation of a possible business combination and informed Moran that SanDisk was prepared to deliver an outline of the general terms of a proposal for an all-stock acquisition of msystems by SanDisk.

10. Unbeknownst to Wagner, on June 5, 2006 Harari delivered to Moran SanDisk's proposal outlining general terms of an all-stock acquisition of msystems by SanDisk.

Wagner's Meeting with Moran and Stock Purchases

11. On June 7, 2006 Moran met with Wagner at msystems' headquarters in Israel. Moran and Wagner discussed a number of business-related issues including financing alternatives. At some point during their discussion, without mentioning the details of the proposal, Moran informed Wagner about the recent proposal by SanDisk. Consistent with the company's prior responses to SanDisk's

overtures, Wagner recommended that this proposal be rejected as well.

12. On June 8, 2006, Wagner bought 200,000 shares of msystems common stock for \$27.77 per share.

Final Merger Negotiations

13. During the remainder of June 2006, representatives of msystems and SanDisk held discussions regarding a possible transaction and consulted with their respective outside financial advisors.

14. In early July 2006, msystems formally engaged a financial advisor in connection with a possible business combination with SanDisk, and outside legal counsel to SanDisk delivered to representatives of msystems drafts of a merger agreement.

15. In mid-July 2006, representatives of SanDisk and of msystems, together with their respective financial advisors and outside legal counsel, held numerous meetings in London to negotiate the terms of the proposed merger.

16. Between July 26 and July 29, 2006, representatives of SanDisk and of msystems and their respective advisors participated in numerous meetings and telephone conferences concerning, and exchanged revised drafts of, the proposed merger agreement.

17. On July 29, 2006, Harari and Moran reached a general understanding that the respective boards of directors of SanDisk and msystems should consider an exchange ratio of 0.76368.

18. At a meeting of the msystems board of directors on July 29, 2006, the msystems board of directors unanimously approved the terms of the proposed merger.

19. During the evening of July 29 and the morning of July 30, 2006 representatives from SanDisk and of msystems finalized the merger agreement and related agreements.

20. On July 30, 2006 SanDisk and msystems executed the merger agreement and related agreements and the parties issued a joint press release. The closing price of msystems stock increased \$4.21 or 13.2% the next day.

CLAIM FOR RELIEF

21. Plaintiff SEC hereby incorporates ¶¶ 1 through 20 with the same force and effect as if set out here.

22. In the manner described in ¶¶ 1 through 21, defendant Wagner, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of

material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons.

23. By reason of the foregoing, defendant Wagner violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court enter a final judgment:

(a) permanently enjoining defendant Wagner and his agents, servants, employees, attorneys-in-fact, and those in active concert or participation with them, who receive actual notice by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

(b) ordering defendant Wagner to disgorge his ill-gotten gains, plus prejudgment interest thereon;

(c) granting such other relief as this Court may deem just and appropriate.

Dec. 7, 2007

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