



4. On December 27, 2007, prior to the opening of U.S. stock markets, EMC and DOCX issued a joint press release announcing that EMC would acquire DOCX in an all-cash transaction valued at \$85 million, or \$14.75 per share.

5. After this announcement, the price of DOCX common stock rose 76% and ended trading on December 27, 2007 at a price of \$14.49 per share. Fogel made ill-gotten gains of more than \$191,000 by purchasing DOCX shares based on material, non-public information in advance of the public announcement and then selling those shares after the announcement.

6. Fogel knew, should have known or was reckless in not knowing, that the information about the possible acquisition of DOCX was confidential, and that by trading while in possession of, and based on that information, for his own benefit, he violated his fiduciary duty or other relationship of trust and confidence that he owed to EMC and its shareholders.

7. Fogel violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. The Commission requests that this Court permanently enjoin Fogel from violating the foregoing securities laws, order him to disgorge his unlawful profits with prejudgment interest, impose civil monetary penalties and order such other and further relief as the Court may deem appropriate.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this matter pursuant to Sections 21(d) and (e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e), 78u-1, and 78aa].

9. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts, practices, transactions, and courses of business constituting the violations occurred in the District of Massachusetts.

10. Fogel directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

11. Unless restrained and enjoined, Fogel will continue to engage in the acts, practices, transactions, and courses of business that are alleged in this Complaint and that violate the provisions of the Exchange Act at issue, or in acts, practices, transactions, and courses of business of similar purpose and object. The Commission seeks a judgment permanently enjoining Fogel from future violations of the provisions of the Exchange Act at issue and directing disgorgement of his ill-gotten gain, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and (e)]. The Commission also brings this action for an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

#### **DEFENDANT**

12. **Avi Fogel**, 54, resides in Brookline, Massachusetts. From June 2006 to approximately February 2008, Fogel was a Vice President at EMC, responsible for strategic initiatives in EMC's Content Management and Archiving division.

#### **RELEVANT ENTITIES**

13. **Document Sciences Corporation** was, prior to its acquisition by EMC, a global provider of customer communications management solutions. It was incorporated in Delaware and had its principal place of business in Carlsbad, California. Before the acquisition, DOCX common stock was registered with the Commission pursuant to Exchange Act Section 12(b), and traded on the Nasdaq Global Market. In the 52 weeks prior to EMC's announcement on

December 27, 2007 that it would acquire DOCX, shares of DOCX common stock traded within a range of \$5.81 to \$10.90 on average daily volume of approximately 6,960 shares.

14. **EMC Corporation** is a Delaware corporation headquartered in Hopkinton, Massachusetts. EMC's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on the New York Stock Exchange.

### **FACTUAL ALLEGATIONS**

#### **Fogel Violated His Duty to EMC and Its Shareholders**

15. Fogel joined EMC in June 2006, after EMC acquired the privately-held company at which he had served as chief executive officer. He later became Vice President of strategic initiatives in EMC's Content Management and Archiving ("CMA") division.

16. Upon joining EMC, Fogel acknowledged that he received and reviewed the 2006 version of EMC's Insider Trading Policy, and acknowledged that he would abide by that policy.

17. In relevant part, EMC's 2006 Insider Trading Policy provides: "if any employee or director is aware of material non-public information regarding another company ... obtained in the course of working for EMC, neither that person nor any related person may buy or sell securities of that other company or engage in any other action to take advantage of, or pass on to others, that information." As an example of "material information," the 2006 version of EMC's Insider Trading Policy included "a proposed merger or acquisition."

18. On the day he joined EMC, Fogel also signed an "Inventions Assignment, Nondisclosure, and Noncompetition Agreement" with EMC, which prohibited him from using confidential information concerning EMC or its business strategy, among other things, for his own benefit. Fogel also received and acknowledged EMC's 2006 Business Conduct Guidelines.

19. In a section headed, "Do Not Engage in Insider Trading," EMC's 2006 Business Conduct Guidelines stated, among other things: "You may also become aware of inside information about other companies, such as EMC's partners, suppliers and customers, through your work at EMC. You are similarly prohibited from buying or selling securities of such other company if you are aware of inside information about that other company."

20. Subsequently, Fogel received updated versions of EMC's Business Conduct Guidelines and Insider Trading Policy for 2007. These versions contained language prohibiting insider trading that was identical, or nearly identical, to the 2006 versions.

21. In addition to these corporate policies, EMC required Fogel to undergo direct training on confidential corporate matters at the beginning of his employment. In July 2006, Fogel completed a corporate compliance program, which included computer-based, interactive instruction about insider trading and EMC's Business Conduct Guidelines.

22. Shortly after Fogel began work on the project that led to EMC's acquisition of DOCX, EMC notified Fogel that he would be added to the company's stock trading blackout list.

23. In an email dated March 26, 2007, an EMC employee informed Fogel that he was in possession of material, confidential information due to his position with the company and, consequently, would be added to the list. In response, Fogel acknowledged this development as well as receipt of EMC's Securities Trading Policy that same day.

24. After Fogel acknowledged receipt of the Securities Trading Policy, EMC sent him copies of the policy on at least three subsequent occasions, in connection with notices that the EMC stock trading window was closing.

**Fogel Acquired Material, Non-Public Information  
About EMC's Interest in a Potential Acquisition of DOCX**

25. In late 2006, Fogel was asked to lead a team in the evaluation of a certain product category known as document output management ("DOM"), in order to determine whether EMC should enter that market through organic growth or through acquisition of a company that had an existing product in that category. This project ultimately led to EMC's acquisition of DOCX.

26. By May 6, 2007, Fogel's team had determined that an acquisition was a better option than organic growth, and determined that DOCX, among others, would be placed on the short list. EMC had a pre-existing partnership with DOCX prior to the initiation of the DOM project.

27. On June 28, 2007, Fogel sent an email to his supervisor, writing that his team was "strongly favoring moving forward with" an acquisition of DOCX, although additional due diligence and other items remained to be completed.

28. In an email dated June 30, 2007, Fogel used the code name "Dominica" to refer to DOCX.

29. On July 18, 2007, Fogel and his team made a presentation to Fogel's supervisor about a potential acquisition of DOCX. Fogel's supervisor consented to the recommendation, allowing the proposal to be presented to a team of EMC executives.

30. While evaluating and internally recommending DOCX as an acquisition target at EMC, Fogel met with and kept in touch with DOCX executives.

31. The recommendation to acquire DOCX was scheduled for a meeting before EMC's Corporate Technology Review Board ("CTRB") on August 27, 2007. The CTRB consists of EMC's Chief Technology Officer ("CTO") and all the CTOs of EMC's operating divisions.

The CTRB reviews, among other things, potential acquisitions for their technological fit within EMC.

32. Fogel prepared materials for this meeting, delivered a portion of the presentation, and recommended that EMC acquire DOCX because it would give EMC a competitive advantage.

33. During the presentation, Fogel and others referred to DOCX by the code name "Newport." A slide in the final version of the Powerpoint presentation read as follows: "Request [Letter of Intent] approval at October 22<sup>nd</sup> M&A Committee; Proceed with due diligence; Target close early Q4."

34. Fogel was reminded of the need for confidentiality after Fogel slipped at the end of the CTRB presentation and said "Document Sciences" instead of the code name "Newport."

35. The CTRB decided at the meeting that EMC should move forward with the DOCX acquisition, and Fogel updated certain EMC employees of the CTRB decision the following day.

36. On September 11, 2007, Fogel emailed his supervisor and others, encouraging them to expedite the approval process for the proposed DOCX acquisition. Fogel reiterated this sense of urgency in another email on September 25, 2007.

37. On October 10, 2007, Fogel received an email with a draft Powerpoint presentation to be made to the mergers and acquisitions committee of EMC's Board of Directors, in connection with a request for a letter of intent to acquire DOCX.

38. During an email exchange on October 30, 2007 with an employee in EMC's CMA division, Fogel learned that the mergers and acquisitions committee of EMC's Board of Directors had approved a request for a letter of intent to be issued to DOCX during the week of

October 22, 2007, that it did not meet DOCX's expectations, and that the leaders of EMC's CMA division were trying to get approval to raise EMC's bid for DOCX. In response to this email, Fogel wrote that the minimum acquisition price DOCX would accept was \$54 million.

39. On November 5, 2007, in answer to an email query for an update on the "DOM opportunity" since the CTRB review in August, Fogel wrote in response that: "The project is moving along under the code name Newport." An EMC employee then informed Fogel that "this is a public company and that we want to stop discussing this in this semi-public forum." Fogel acknowledged her point in a reply email.

40. On November 16, 2007, Fogel emailed a high-ranking DOCX executive, and included on the email other EMC employees involved in the process which led to the acquisition of DOCX. In this email, Fogel asked what he termed "a due diligence question" about one of DOCX's customers.

41. A few days later, Fogel received a detailed answer in response from the high-ranking DOCX executive.

42. On November 23, 2007, Fogel forwarded his response to a member of the mergers and acquisitions group in EMC's CMA division, after this employee asked for the response by the high-ranking DOCX executive to Fogel's original email.

**Fogel Traded in DOCX Common Stock  
Ahead of the Acquisition Announcement**

43. Between November 23 and November 30, 2007, Fogel purchased 20,000 shares of DOCX common stock for prices ranging from \$8.35 to \$8.40. Then, two trading days before the public announcement of the deal, Fogel acquired an additional 10,000 DOCX common shares for \$8.22 per share on December 24, 2007.



44. In total, between November 23 and December 24, 2007, Fogel acquired a total of 30,000 DOCX common shares for prices ranging from \$8.22 to \$8.40 per share.

45. At 6:00 a.m. Eastern Standard Time on December 27, 2007, EMC and DOCX issued a joint press release announcing that EMC would acquire DOCX in an all-cash transaction valued at \$85 million, or \$14.75 per share.

46. After this announcement, there was a significant increase in the volume and price of DOCX common stock. On December 27, 2007, DOCX common stock closed trading at \$14.49, up 76% from the previous day's close of \$7.91, on volume of 653,275 shares, compared with average daily volume of 12,198 over the three months preceding the acquisition announcement. Fogel sold his DOCX shares after the announcement, on February 28, 2008.

47. Fogel's ill-gotten gain from his trading in DOCX common stock totaled more than \$191,000.

#### **CLAIM FOR RELIEF**

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Between November 23, 2007 and December 24, 2007, in violation of a fiduciary duty or other relationship of trust and confidence owed to EMC and its shareholders, Fogel purchased 30,000 shares of DOCX common stock. Fogel purchased the shares when he knew, should have known or was reckless in not knowing, that the information he possessed concerning the proposed acquisition of DOCX was material, non-public information and he had a duty to safeguard the confidentiality of the information and not misuse it.

50. Fogel's ill-gotten gain from his trading in DOCX common stock totaled more than \$191,000.

51. By engaging in the foregoing conduct, Fogel, directly or indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court enter judgment:

- (a) permanently enjoining Fogel from, directly or indirectly, violating Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- (b) ordering Fogel to disgorge all ill-gotten gains obtained through the violations alleged herein, with prejudgment interest thereon;
- (c) ordering Fogel to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (d) granting such other and further relief as may be appropriate.

Dated: Washington, D.C.  
January 22, 2010

Respectfully submitted,

/s/ Sarah L. Levine

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