



U.S. Department of Justice

United States Attorney  
Southern District of New York

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

January 20, 2012

Peter G. Neiman, Esq.  
WilmerHale  
399 Park Avenue  
New York, New York 10022

Re: **Diamondback Capital Management, LLC**

Dear Mr. Neiman:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will not criminally prosecute Diamondback Capital Management, LLC (collectively with its affiliates and subsidiaries, "Diamondback") for any crimes (except for criminal tax violations as to which this Office cannot and does not make any agreement) related to the use by certain former Diamondback employees of material, nonpublic information obtained from public company employees, directly and indirectly, through outside consultants, including through expert networks, between January 1, 2008, and the date of this Agreement. This conduct is described more fully in the Statement of Facts, attached hereto as Exhibit A, which Diamondback acknowledges and accepts as accurate and which is incorporated by reference herein. Moreover, if Diamondback fully complies with the understandings specified in this Agreement, no information provided by Diamondback (or any other information directly or indirectly derived therefrom) will be used against Diamondback in any criminal tax prosecution. This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to Diamondback and not to any individuals.

This Office has entered into this Agreement based on (i) Diamondback's prompt and voluntary cooperation upon becoming aware of the Government's investigation, which is ongoing; (ii) Diamondback's voluntary implementation of remedial measures since becoming aware of the Government's investigation, as set forth in the Statement of Facts; (iii) Diamondback's willingness to continue to cooperate with this Office and the Federal Bureau of Investigation; (iv) Diamondback's representation, based on an investigation by external counsel, the results of which have been shared with the Office, that the misconduct under investigation did not, and does not, extend beyond that described in the Statement of Facts, and was not known by the firm's co-founders; and (v) the negative effect that the continuing uncertainty regarding the Government's investigation would have on Diamondback's financial condition and its remaining employees and investors.

It is understood that Diamondback (a) shall truthfully and completely disclose all information with respect to the activities of Diamondback, its officers and employees, and others concerning all such matters about which this Office inquires related to the Government's investigation, which information can be used for any purpose, except as limited by this Agreement; (b) shall cooperate fully with this Office, the Federal Bureau of Investigation, and any other law enforcement agency so designated by this Office; (c) shall provide to this Office, upon request, any document, record, or other tangible evidence in Diamondback's possession, custody or control, relating to the Government's investigation; (d) shall, at the Office's request, use its best efforts to secure the attendance and truthful statements or testimony of any officer, agent, employee, or former officer, agent or employee, at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (e) shall commit no crimes whatsoever. It is further understood that Diamondback will bring to this Office's attention all criminal conduct by, and criminal investigations of, Diamondback or its employees that come to the attention of Diamondback's senior management, as well as any administrative proceeding, civil action or other proceeding brought by any governmental authority in which Diamondback is a party, related to the operation or management of Diamondback's business, and excluding routine proceedings. Diamondback's obligations under this paragraph shall continue until the later of (1) a period of three years from the date this Agreement is executed, or (2) the date on which all prosecutions arising out of the conduct described in the opening paragraph of this Agreement are final.

As a result of the conduct described in this agreement and in the attached Statement of Facts, Diamondback agrees to forfeit \$6,000,000 to the United States, representing Diamondback's and its investors shares of the profits (and losses avoided) from the trading described in paragraphs 7 through 9 of the attached Statement of Facts. Payment shall be wire-transferred to the Seized Assets Deposit Account of the United States Marshals Service within three days of the execution of this Agreement. The Government contends, and Diamondback agrees not to contest, that the facts contained in this Agreement and the attached Statement of Facts are sufficient to establish that the \$6,000,000 being paid by Diamondback to the Government is subject to civil forfeiture to the Government and that this Agreement and accompanying Statement of Facts, in lieu of a separate affidavit, may be attached to and incorporated into the Civil Forfeiture Complaint to be filed against said amount. By this Agreement, Diamondback specifically waives service of said Civil Forfeiture Complaint and agrees that a Final Forfeiture Order may enter against the \$6,000,000 paid. Upon payment of said funds, Diamondback shall release any and all claims it may have to such funds and execute such documents as are necessary to accomplish the same, including the release of its claim to said funds in a civil forfeiture proceeding brought against said funds.

It is understood that, should it be determined that (a) Diamondback committed any crimes during the term of this Agreement, (b) Diamondback or any of its representatives have given

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false, incomplete, or misleading testimony or information, (c) the misconduct extended beyond that described in the Statement of Facts or was known to the co-founders of the firm prior to the commencement of Diamondback's investigation in November 2010, or (d) Diamondback has otherwise violated any provision of this Agreement, then (i) Diamondback shall thereafter be subject to prosecution for any federal offense of which this Office has knowledge, including perjury and obstruction of justice; (ii) all statements made by Diamondback's representatives to this Office or other designated law enforcement agents, including but not limited to the appended Statement of Facts, and any testimony given by Diamondback's representatives before a grand jury or other tribunal whether prior to or subsequent to the signing of this Agreement, and any leads therefrom, shall be admissible in evidence in any criminal proceeding brought against Diamondback and relied upon as evidence to support any penalty imposed on Diamondback; and (iii) Diamondback shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. In addition, any such prosecution that is not time-barred by the applicable statute of limitations on the date of the execution of this Agreement may be commenced against Diamondback, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date when this Agreement is signed.

It is further understood that this Agreement does not bind any other federal, state, or local prosecuting authorities other than this office. If requested by Diamondback, this Office will, however, bring the cooperation of Diamondback to the attention of such other prosecuting offices or regulatory agencies.

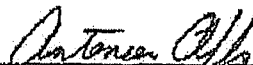
It is understood that this Agreement and the Statement of Facts appended hereto are public documents and may be provided to any person by the Office and Diamondback.

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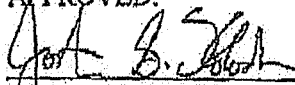
This Agreement supersedes all prior understandings, promises and/or conditions between this Office and Diamondback. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by both parties.

Very truly yours,


  
PREET BHARARA  
United States Attorney

By:   
Antonia M. Apps / David S. Leibowitz  
Assistant United States Attorneys  
(212) 637-2198/1947

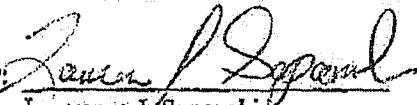
APPROVED:

  
Jonathan S. Kolodner  
Acting Chief, Criminal Division

AGREED AND CONSENTED TO:  
Diamondback Capital Management, LLC


By:   
Richard H. Schimel  
A Managing Member

1/20/12  
DATE

By:   
Lawrence J. Sapanski  
A Managing Member

1/20/12  
DATE

APPROVED:

  
Peter G. Neiman, Esq.  
Attorney for Diamondback Capital  
Management, LLC

1/20/12  
DATE

## EXHIBIT A

Diamondback Capital Management, LLC (“Diamondback”) submits to the United States Attorney’s Office for the Southern District of New York that the following statement of facts is true and correct. This statement of facts shall be admissible in any criminal proceedings brought by the United States against Diamondback.

1. Diamondback Capital Management, LLC (“Diamondback”) is registered as an investment adviser with the Securities and Exchange Commission and serves as an investment manager to several private, unregistered hedge funds. At all relevant times, Diamondback’s written compliance policy prohibited insider trading.

2. Under Diamondback’s business model, the firm’s co-founders manage a “center book,” and individual portfolio managers each manage his or her own, substantially smaller, books. Each individual portfolio manager has primary responsibility for the selection, management and compensation of any analysts or traders they wish to hire to assist in managing the portfolio, subject to central review of hiring and compensation decisions. Each individual portfolio manager has full discretion to invest his or her book subject to Diamondback’s compliance policies and risk parameters.

3. On or about March 1, 2006, Diamondback hired a portfolio manager (the “PM”) to manage investments in technology stocks in a portfolio outside of the center book. In or about September 2007, the PM hired an analyst (the “Analyst”) to assist the PM in identifying potential investments.

4. Diamondback had contractual relationships with various firms known as “Expert Networks,” which for a fee (generally paid through soft dollars), would connect Diamondback employees with experts in particular industries in order to facilitate investment research. Additionally, portfolio managers could retain outside consultants – separate and apart from the Expert Networks – who provided custom research, and who were also generally paid through soft dollars.

5. On or about May 1, 2008, Diamondback adopted a specific policy governing interactions with expert consultants like those supplied by Expert Networks. The policy provided that “in order to minimize the possibility of receiving material non-public information, in the course of conducting research on any public company, employees may not retain as Consultants individuals who are employed by such a company.” (Emphasis in original).

6. The PM and Analyst routinely violated Diamondback’s consultant policy, and the PM traded while in possession of information derived from these policy violations.

7. On multiple occasions in 2008 and 2009, the Analyst arranged through certain Expert Networks to speak to consultants whom the Analyst knew were current employees of public companies in the stock of which the PM had a position or had previously traded. The

Analyst spoke to public company employees through Expert Networks and at times learned detailed nonpublic, financial information about the public companies for which they worked. The Analyst then regularly summarized his conversations with these current employees of public companies in emails he sent to the PM. In various emails, the Analyst provided the PM with information identifying the source of the information as an employee of a public company. The Analyst also regularly shared information he obtained from these public company employees with employees of other financial institutions, who in turn shared with the Analyst information they had obtained from public company employees through Expert Networks and other sources. The Analyst shared the information provided by these employees of other financial institutions with the PM. Further, certain of the third-party consultants retained by the PM provided to the Analyst and the PM material, nonpublic information that had been obtained from public company employees, including information that came from an employee of Dell, Inc. ("Dell") who provided Dell financial information to the Analyst in advance of Dell's quarterly earnings' announcements.

8. As noted above, the information the Analyst and PM obtained from public company employees included material, nonpublic information, that is, data that a reasonable investor would consider important in making investment decisions. Further, after receiving this type of information, the PM often bought or sold the stock of the company, sometimes within minutes of receiving the information from the Analyst. For example, in advance of Dell's May 29, 2008 quarterly earnings announcement, the Analyst received material, nonpublic information concerning Dell's financial condition, including gross margin information, indicating that Dell would perform better than market expectations, and the PM traded on this information, resulting in approximately \$1 million in illegal profits. Additionally, in advance of Dell's August 28, 2008 earnings announcement, the Analyst received material, nonpublic information concerning Dell's financial condition, including gross margin information, indicating Dell would perform worse than market expectations, and the PM traded on this information, resulting in approximately \$2.8 million in illegal profits. The Dell information was obtained indirectly through a third party, who was paid by Diamondback through soft dollar payments to an individual close to that third party. Further, in advance of the May 7, 2009 earnings announcement of NVIDIA Corporation, the Analyst received material, nonpublic information concerning the company's financial results, and the PM traded on the information.

9. The PM's trading described in paragraph 8 violated Diamondback's policies against insider trading and was unlawful. Through an internal investigation described in more detail below, Diamondback identified certain additional trades by the PM that were likely based, in whole or in part, on material, nonpublic information obtained from public company employees through the methods described above, including trades in Dell and several other public companies. In total, these trades and the trades described in paragraph 8 generated approximately \$6 million in illegal profits and losses avoided, of which Diamondback and its investors received approximately \$4.8 million, with the remainder going to the PM and the Analyst.

10. In April 2010, the Analyst resigned from Diamondback. In November 2010, after the Government executed a search warrant of certain locations inside Diamondback, Diamondback placed the PM on leave, and he is no longer employed by the firm.

11. In the fall of 2009, Diamondback instructed the Expert Network firms with which it was actively doing business not to permit their employees to arrange or allow any meetings or conference calls between Diamondback employees and any expert consultant who was employed by a public company. Additionally, after Diamondback learned of the Government's investigation, Diamondback enhanced the process by which it approves the use of individual research consultants. Among other things, when investment personnel indicate that a consultant will provide customized (as opposed to generic) research, Diamondback's compliance staff conducts due diligence before approval is given to use soft dollars to pay the consultant. That due diligence includes questions about (a) the basis of the research provider's expertise/research methodology; (b) the sources of the research provider's information; and (c) whether the research provider is employed by any public company or has separated from such a company within the last year. If compliance staff receives unsatisfactory answers to these inquiries, use of the research provider will not be approved by compliance. In late 2010, Diamondback suspended the use of Expert Networks altogether.

12. Following the Government's searches of certain locations within Diamondback's offices in November 2010, outside counsel conducted an extensive investigation of Diamondback's use of outside consultants, including Expert Network firms. Diamondback proactively shared the results of that investigation with the Government. Diamondback's counsel's investigation found no evidence that either the conduct or the improper information described in paragraphs 7 through 9 above were known to the firms' co-founders prior to the search, and no evidence sufficient to establish that any Diamondback employee, other than the PM and the Analyst, knowingly traded in the stock of a company while possessing information about that company that the employee knew had been improperly obtained from an employee of that company.