**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**
**Release No. 9192 / March 1, 2011**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 63995 / March 1, 2011**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 3167 / March 1, 2011**

**INVESTMENT COMPANY ACT OF 1940**
**Release No. 29580 / March 1, 2011**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-14279**

**In the Matter of**

**Rajat K. Gupta,**

**Respondent.**

**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Rajat K. Gupta ("Respondent" or "Gupta").

## II.

After an investigation, the Division of Enforcement alleges that:

A. <u>SUMMARY</u>

1. This matter concerns insider trading by Rajat K. Gupta ("Gupta"), who on a number of occasions disclosed material nonpublic information that he obtained in the course of his duties as a member of the Boards of Directors of The Goldman Sachs Group, Inc. ("Goldman Sachs") and The Procter & Gamble Company ("Procter & Gamble") to Raj Rajaratnam ("Rajaratnam"), the founder and a Managing General Partner of the hedge fund investment adviser Galleon Management, LP ("Galleon"). Rajaratnam, in turn, either caused the Galleon hedge funds that he managed to trade based on the material nonpublic information, or passed the information on to others at Galleon and caused trades based on the information.

2. Specifically, Gupta disclosed to Rajaratnam material nonpublic information concerning Berkshire Hathaway Inc's ("Berkshire") $5 billion investment in Goldman Sachs before it was publicly announced on September 23, 2008, as well as Goldman Sachs's financial results for both the second and fourth quarters of 2008. Rajaratnam caused the various Galleon hedge funds that he managed to trade based on the material nonpublic information, generating illicit profits and loss avoidance of more than $17 million. In addition, Gupta disclosed to Rajaratnam material nonpublic information concerning Procter & Gamble's financial results for the quarter ending December 2008. Rajaratnam relayed this information to others at Galleon, who caused Galleon funds to trade based on the information, generating illicit profits of over $570,000.

3. In the course of carrying out the insider trading scheme, Rajaratnam informed certain conspirators that he obtained nonpublic information concerning Goldman Sachs from his source on the company's Board. Rajaratnam informed at least one other conspirator that he obtained nonpublic information concerning Procter & Gamble from his source on Procter & Gamble's Board. As set forth below, Gupta was Rajaratnam's source on both companies' Boards and knowingly or recklessly disclosed material nonpublic information to Rajaratnam for use in trading activities.

4. During the relevant period, Gupta had a variety of business dealings with Rajaratnam and stood to benefit from his relationship with Rajaratnam. In addition, Gupta was an investor in, and a director of, Galleon's GB Voyager Multi-Strategy Fund SPC, Ltd., a master fund with assets that were invested in numerous Galleon hedge funds, including those that traded based on Gupta's illegal tips.

5. By virtue of his conduct, Gupta willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. RESPONDENT

6. *Gupta*, age 62, resides in Westport, Connecticut. From November 2006 through May 2010, Gupta was a member of Goldman Sachs's Board of Directors. During his tenure on Goldman Sachs's Board, Gupta served as a member of the Board's Audit Committee, Corporate Governance and Nominating Committee, and Compensation Committee. Since 2007, Gupta has also been a member of Procter & Gamble's Board of Directors, and has served on the Board's Audit Committee and its Innovation and Technology Committee. Gupta serves on the Boards of Directors of several other public companies and is affiliated with other entities, both public and private. Gupta is a Founding Partner and the Chairman of New Silk Route Partners LLC, an investment firm that was originally called Taj Capital Partners and was founded by Gupta, Rajaratnam, and others in 2006. Gupta holds a Bachelor of Technology degree in mechanical engineering from the Indian Institute of Technology and an MBA from Harvard Business School.

C. OTHER RELEVANT ENTITIES

7. *Berkshire* is a Delaware corporation headquartered in Omaha, Nebraska. Berkshire is a holding company that owns subsidiaries engaged in many business activities. Berkshire's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the New York Stock Exchange ("NYSE") under the symbols "BRK-A" for its Class A shares, and "BRK-B" for its Class B shares.

8. *Galleon*, a Delaware limited partnership, is a hedge fund investment adviser based in New York, New York. As of March 2009, Galleon had over $2.6 billion under management. Galleon was founded in 1997 and registered with the Commission as an investment adviser in January 2006. In the wake of the October 16, 2009, insider trading arrest of Rajaratnam, Galleon began to liquidate itself and the hedge funds it advised. During the relevant period, Galleon served as the investment adviser for several hedge funds, including Technology Offshore Fund, Technology Partners Fund, Technology MAC Fund, and the Diversified Fund (collectively, the "Galleon Tech funds").

9. *Goldman Sachs* is a Delaware corporation headquartered in New York, New York. Goldman Sachs is a global investment banking, securities, and investment management firm that provides financial services to a client base that includes corporations, financial institutions, governments, and high-net-worth individuals and has a substantial broker-dealer operation. The subsidiaries of Goldman Sachs include broker-dealers and investment advisers registered with the Commission. Goldman's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock trades on the NYSE under the symbol "GS."

10. *Procter & Gamble* is an Ohio corporation headquartered in Cincinnati, Ohio. Procter & Gamble is a provider of branded consumer goods products in over 180 countries around the world. Procter & Gamble's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock trades on the NYSE under the symbol "PG."

11. *Rajaratnam*, age 53, resides in New York, New York. Rajaratnam is the founder and a Managing General Partner of Galleon, and, during the relevant period, served as Portfolio Manager of the Galleon Tech funds. Prior to founding Galleon, Rajaratnam worked at Needham & Co., a registered broker-dealer, for 11 years, at which time he held Series 7 and Series 24 securities licenses. Rajaratnam obtained a degree from the University of Sussex, England, in 1980, and an MBA in Finance from the Wharton School of the University of Pennsylvania in 1983.

D. ALLEGATIONS

**Gupta Disclosed Material Nonpublic Information to Rajaratnam Concerning Berkshire's $5 Billion Investment in Goldman Sachs**

12. In September 2008, Gupta disclosed to Rajaratnam material nonpublic information he learned as a member of the Goldman Sachs Board of Directors concerning, among other things, Berkshire's $5 billion investment in Goldman Sachs, which was publicly announced on September 23, 2008. Rajaratnam, in turn, caused the Galleon Tech funds to trade based on the material nonpublic information that Gupta disclosed.

13. Soon after the bankruptcy filing of Lehman Brothers Holdings Inc. ("Lehman") on September 15, 2008 —which sent the financial markets into an unprecedented tailspin — senior management of Goldman Sachs began considering various strategic alternatives as they tried to navigate through the ongoing financial crisis. These alternatives included a potential investment from an institutional investor like Berkshire, and were variously discussed at Goldman Sachs Board meetings and posting calls during the week and a half following Lehman's bankruptcy filing.

14. Goldman Sachs executives continued to explore various strategic alternatives the weekend after the Lehman bankruptcy. The Goldman Sachs Board convened a Special Meeting on Sunday, September 21, 2008. During that meeting, which Gupta attended via teleconference, the Board approved Goldman Sachs becoming a Bank Holding Company. The Goldman Sachs Board was also updated on certain strategic alternatives that had been considered over the weekend.

15. Goldman Sachs CEO Lloyd Blankfein ("Blankfein") had a long-standing practice of informing the Board during posting calls, meetings and phone calls about the then-current financial status of the firm. Goldman's net revenues had been particularly strong in the week leading up to the meeting – despite the fact that the week had begun with Lehman's bankruptcy and that the financial markets were in a general state of turmoil. While the Board's determination to convert Goldman Sachs into a Bank Holding Company was publicly disclosed on the evening of September 21, information concerning Goldman Sachs's strategic alternatives and strong net revenue remained confidential.

16. Telephone records and calendar entries indicate that, on the morning of Monday, September 22 — the day after the Sunday evening Goldman Sachs Board

meeting — Gupta and Rajaratnam very likely had a telephone conversation. Shortly after that conversation, Rajaratnam caused the Galleon Tech funds, which held no preexisting long or short position in Goldman Sachs securities at the time, to purchase over 80,000 Goldman Sachs shares.

17. On the morning of September 23, Rajaratnam placed a call to Gupta which lasted over 14 minutes. Less than a minute after the call began, Rajaratnam caused the Galleon Tech funds to purchase more than 40,000 additional Goldman Sachs shares.

18. A Special Telephonic Meeting of the Goldman Sachs Board was convened at 3:15 p.m. on September 23, during which the Board considered and approved a $5 billion preferred stock investment by Berkshire in Goldman Sachs and a public equity offering. As Gupta knew, Berkshire was one of the most respected and influential investors and its decision to make such a large investment in Goldman Sachs would likely be viewed as a strong vote of confidence in the firm when the information was disclosed to the public. The infusion of a large amount of new capital in the firm also would likely be viewed favorably by investors. Gupta participated in the Board meeting telephonically, staying connected to the call until approximately 3:53 p.m. Immediately after disconnecting from the Board call, Gupta called Rajaratnam from the same line. Within a minute after this telephone conversation, at 3:56 p.m. and 3:57 p.m., and just minutes before the close of the markets, Rajaratnam caused the Galleon Tech funds to purchase more than 175,000 additional Goldman Sachs shares. Rajaratnam later informed a conspirator that he received the information upon which he placed the trades minutes before the close.

19. Goldman Sachs publicly announced the Berkshire investment, along with a $2.5 billion public stock offering, after the market close on September 23. Goldman Sachs's stock price, which had closed at $125.05 per share on September 23, opened at $128.44 per share the following day and rose to a closing price that day of $133.00 per share, a gain of 6.36% from the prior day's closing price.

20. On September 24, Rajaratnam caused the Galleon Tech funds to liquidate the long position they had built on September 23, generating profits of over $900,000.

## **Gupta Disclosed Material Nonpublic Information to Rajaratnam Concerning Goldman Sachs's Financial Results for the Fourth Quarter of 2008**

21. Gupta also disclosed material nonpublic information that he learned during a Goldman Sachs Board posting call about Goldman Sachs's financial results for the fourth quarter of 2008 to Rajaratnam, who caused the Galleon funds he managed to trade based on the information.

22. Goldman Sachs announced negative results for the fourth quarter of 2008 on December 16, 2008, reporting a $2.1 billion loss, its first (and only) quarterly loss as a publicly traded company.

23. Blankfein began to appreciate very early in the quarter that results were going to be poor. About mid-quarter, on October 23, 2008 at 4:15 p.m., Blankfein, Goldman Sachs Chief Financial Officer David Viniar ("Viniar"), and other senior executives at Goldman Sachs conducted a Board posting call during which they informed the Board of the company's then-current financial situation. The daily and weekly profit and loss statements that Blankfein and Viniar would typically rely on as the basis for their presentations to the Board show that the company was then operating at a quarter to date loss of $1.96 per share at the time.

24. Gupta dialed into the October 23, 2008, Board meeting around the time it was scheduled to start and remained on the call until 4:49 p.m. Just 23 seconds after disconnecting from the call, Gupta called Rajaratnam. The call lasted approximately 13 minutes. The following morning, just as the financial markets opened at 9:30 a.m., Rajaratnam caused the Galleon Tech funds to begin selling their holdings of Goldman Sachs stock. The funds finished selling off their holdings — which had consisted of over 120,000 shares — that same day at prices ranging from $97.74 to $102.17 per share. The same day (October 24, 2008), in discussing trading and market information with another participant in the trading scheme, Rajaratnam explained that Wall Street expects Goldman Sachs to earn $2.50 per share but that Rajaratnam had heard the prior day from a member of the Goldman Sachs Board that the company was actually going to lose $2 per share. As a result of Rajaratnam's trades based on the material nonpublic information that Gupta provided, the Galleon Tech funds avoided losses of over $3 million.

**Gupta Disclosed Material Nonpublic Information to Rajaratnam Concerning Goldman Sachs's Financial Results for the Second Quarter of 2008**

25. Gupta also disclosed to Rajaratnam material nonpublic information concerning Goldman Sachs's positive financial results for the second quarter of 2008, which were publicly announced on June 17, 2008. Rajaratnam caused the Galleon funds he managed to trade based on the information.

26. Approximately one week before the announcement, on June 10, 2008, at 5:41 p.m., Blankfein placed a call to Gupta that lasted more than 8 minutes. The call was one of several Blankfein made to various Goldman Sachs outside directors around the same time that evening. Blankfein's practice was to apprise Directors of the then-current financial status of the firm when he spoke to them.

27. Goldman Sachs's second quarter of 2008 had ended on May 30, 2008. By June 10, 2008, Goldman Sachs's financial reporting team had already compiled and analyzed the quarterly financial data and put together a draft earnings press release that had been circulated to various finance personnel, including Viniar, prior to Blankfein's call with Gupta. The company's financial performance was strong in an extremely difficult environment, and significantly better than analyst consensus estimates.

28. Blankfein knew the earnings numbers (which were positive) and discussed them with Gupta during their June 10, 2008, telephone conversation.

29. On the night of June 10, 2008, at 9:24 p.m., Gupta placed a short call to Rajaratnam's home. The call was the first in a flurry of short calls between the two over an 18-minute span that night, which culminated in a 4-minute call from Rajaratnam to Gupta, at 9:42 p.m. On the following morning, June 11, at 8:43 a.m., Rajaratnam placed another call to Gupta that lasted about 2.5 minutes. Beginning at 9:35 a.m., minutes after the markets opened, Rajaratnam caused the Galleon Tech funds to significantly increase an existing long position it had established in Goldman Sachs shares by purchasing over 5,500 Goldman Sachs June $170 call option contracts (Goldman Sachs's share price had opened at $167.00 per share on June 11).

30. Rajaratnam also caused the Galleon Tech funds to purchase over 350,000 additional Goldman Sachs shares on June 11 and 12, selling only a small portion on June 13.

31. On June 16, after a positive Goldman Sachs earnings preview was issued sending Goldman Sachs's stock price up more than 2%, Rajaratnam caused the Galleon Tech funds to sell the June $170 call option contracts they had purchased on June 11, generating profits of approximately $7 million.

32. On June 17, prior to market open, Goldman Sachs announced its quarterly results. Revenues and earnings per share beat analysts' estimates, and Goldman Sachs's share price opened the day at $185.04 per share — about 1.62% higher than the prior day's closing price of $182.09 per share. After the announcement, Rajaratnam caused the Galleon Tech funds to sell the Goldman Sachs shares they had purchased after Rajaratnam received the material nonpublic information from Gupta on June 10, generating profits of over $6.6 million.

33. The total illicit profits made by the Galleon Tech funds by virtue of their trading based on Gupta's material nonpublic information concerning Goldman Sachs's second quarter of 2008 results exceeded $13.6 million.

## Gupta Disclosed Material Nonpublic Information to Rajaratnam Concerning Procter & Gamble's Financial Results for the Quarter Ending December 2008

34. Gupta also disclosed to Rajaratnam material nonpublic information that Gupta learned as a member of Procter & Gamble's Board of Directors about Procter & Gamble's financial results for the October through December 2008 quarter. Rajaratnam then passed the material nonpublic information to his Galleon colleagues, who then caused Galleon funds to trade based on the information.

35. At 9:00 a.m. on January 29, 2009, the day before Procter & Gamble's pre-market quarterly earnings release was issued, Procter & Gamble's Audit Committee, of which Gupta was a member, met telephonically to discuss the planned release. Gupta dialed into the Audit Committee meeting at its scheduled start time and remained on the call for over 19 minutes. A draft of the earnings release, which had been mailed to Gupta

and the other committee members two days before the meeting, stated, among other things, that the company expected organic sales, or sales related to preexisting rather than newly acquired business segments, to grow 2-5% in the fiscal year. This compared negatively to the 4-6% growth the company had previously publicly predicted.

36. Gupta called Rajaratnam in the early afternoon on January 29, 2009. Shortly afterwards, Rajaratnam advised another participant in the insider trading conspiracy that he had learned from a contact on Procter & Gamble's Board that the company's organic sales growth would be lower than expected. In the late afternoon of January 29, 2009, Galleon funds sold short approximately 180,000 Procter & Gamble shares. After Procter & Gamble issued its earnings release in the pre-market on January 30 (the actual release was substantially the same as the draft release Gupta had been provided), Procter & Gamble's stock price, which had closed at $58.22 per share on January 29, opened on January 30 at $56.50 per share. The stock price declined further to $54.50 per share by the close on January 30, down approximately 6.39% from the prior day's closing price.

37. By virtue of their trades, which were based on the material nonpublic information that Gupta provided to Rajaratnam, the Galleon funds generated illicit profits of over $570,000.

## Gupta's Fiduciary Duty to Keep Confidential All Material, Nonpublic Information about Goldman Sachs

38. As a Goldman Sachs Director, Gupta had a duty to keep confidential all material, nonpublic information about Goldman Sachs.

39. Goldman Sachs's Corporate Governance Guidelines in effect and applicable to Gupta during the relevant period provided that the proceedings and deliberations of the Board and its committees were confidential. Moreover, non-employee directors such as Gupta were prohibited from speaking on behalf of the company without consulting the Chief Executive Officer.

## Gupta's Fiduciary Duty to Keep Confidential All Material, Nonpublic Information about Procter & Gamble

40. As a Procter & Gamble Director, Gupta had a duty to keep confidential all material, nonpublic information about Procter & Gamble.

41. Procter & Gamble's insider trading policy in effect and applicable to Gupta during the relevant period prohibits him from trading while in possession of material nonpublic information concerning Procter & Gamble, or from conveying that information to others, and specifically prohibits use or disclosure of information included in draft earnings reports as subject to the policies' strictures.

E. VIOLATIONS

42. As a result of the conduct described above, Gupta willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

**III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations or future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act and penalties pursuant to Section 8A(g) of the Securities Act and Section 21B(a)(2) of the Exchange Act; and whether other appropriate relief should be granted in the public interest, including a prohibition from service as an officer or director of any issuer pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act.

## IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission’s Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission’s Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary