**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff, :**

**v.**

**PETER J. DAVIS, JR., :**
**JOHN M. YOUNGDAHL, :**
**and STEVEN E. NOTHERN, :**

**Defendants. :**

**Civil Action No.**

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), as and for its Complaint, alleges:

## SUMMARY

1. On the morning of October 31, 2001, Peter J. Davis, Jr., a Washington, D.C.-based consultant; John M. Youngdahl, formerly a Vice President and Senior Economist at Goldman Sachs & Co., Inc. ("Goldman Sachs"), a New York broker-dealer; and Steven E. Nothern, formerly a mutual fund manager at Massachusetts Financial Services Company ("MFS"), violated the Federal securities laws' prohibition against insider trading. Davis, a paid consultant to Goldman Sachs and MFS, among others, tipped Youngdahl and Nothern with material nonpublic information that the United States Department of the Treasury ("Treasury") would suspend issuance of the 30-year bond, which Davis procured at a Treasury quarterly refunding press conference. Youngdahl in turn tipped traders on Goldman Sachs' Treasury Desk. Nothern purchased 30-year bonds while in possession of material nonpublic information and also tipped three other MFS portfolio managers with the information Davis provided. Goldman Sachs' Treasury Desk traders, Nothern, and the three MFS portfolio managers purchased 30-year bonds, generating large profits before the suspension was publicly announced later that morning.

2. Davis had been attending quarterly refunding press conferences since 1994, and had an explicit agreement with Treasury that he could attend the refunding press conferences only if he obeyed the embargo Treasury imposed on information it there disclosed. Davis understood that the Treasury embargo was a long-standing practice that required recipients of Treasury information in advance of public announcements to keep the information confidential until it is made public.

3. In July 2001, Davis and Youngdahl agreed, in a series of e-mails, that Davis would violate the embargo by providing Youngdahl with confidential information he learned at Treasury refunding press conferences.

4. On October 31, 2001, Davis attended the nonpublic quarterly refunding press conference from 9:00 a.m. to approximately 9:25 a.m. at Treasury's Washington, D.C. headquarters. At the conference, Treasury officials informed the attendees, predominantly members of the press, that Treasury would announce its intention to suspend issuance of the 30-year bond later that morning and that news of the announcement was embargoed until 10:00 a.m. Thus, Treasury required all persons present to maintain confidentiality of the information until expiration of the embargo, when Treasury intended to announce the news to the public.

5. At approximately 9:43 a.m., the information from the refunding press conference was inadvertently posted on Treasury's web site. However, before that time, Davis placed nine cellular telephone calls to eight of his clients, including Youngdahl and Nothern, and in breach of the embargo and his duty to Treasury, communicated to them the confidential information that issuance of the 30-year bond would be suspended.

6. Immediately upon receipt of the tip from Davis, Youngdahl communicated the confidential information to traders on Goldman Sachs' Treasury Desk.

7. Nothern communicated the confidential information he received from Davis to three other MFS portfolio managers.

8. After the inadvertent release of the confidential information he learned at the Treasury refunding conference, Davis placed eight additional cell phone calls to six of his clients before 10:00 a.m., the time he had been informed by Treasury, and believed, that the confidential information would be released to the public.

9. Before the Treasury refunding information was released to the public, Goldman Sachs' Treasury Desk traders purchased $84 million in par value of 30-year bonds. Likewise, Nothern, while in possession of material nonpublic information, purchased $25 million in par value of 30-year bonds and also tipped three MFS portfolio managers with the Davis information who then purchased an additional $40 million in par value of 30-year bonds. When news of suspension of the issuance of the 30-year bond was reported on a wire service, the price of the bond skyrocketed. Goldman Sachs' Treasury Desk traders sold $84 million par value bonds after 9:59 a.m. on October 31, generating nearly $1.6 million in profit for Goldman Sachs' proprietary accounts. As a result of their bond purchases, Nothern and the three other MFS portfolio managers made profits of $3.1 million for the portfolios they managed.

10. By their conduct described herein, Davis, Youngdahl, and Nothern (collectively the "Defendants") violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder. Unless enjoined, the Defendants are likely to engage in such unlawful conduct again. The Commission seeks injunctive relief, and disgorgement of illegal profit, prejudgment interest, and civil money penalties from Defendants.

## JURISDICTION

11. This Court has jurisdiction pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the Exchange Act.

12. Venue is proper in this district, pursuant to 15 U.S.C. §§ 78aa, and 28 U.S.C. § 1391(b) and (c), because substantial events or omissions giving rise to the Commission's claim occurred in this district.

13. Defendants used the means or instruments of interstate commerce or the mails in connection with the acts described herein.

## DEFENDANTS

14. Peter J. Davis, Jr., is a resident of Washington, D.C. Through his Washington, D.C.-registered sole proprietorship, Davis Capital Investment Ideas, Davis sells his oral and written analyses of Washington political and financial events to broker-dealers, financial analysts and investors. Davis is an economist and was a Congressional aide for approximately 11 years. Goldman Sachs and MFS were, at all relevant times, clients of Davis.

15. John M. Youngdahl, a resident of Summit, New Jersey, was at all relevant times a Vice President and Senior Economist in Goldman Sachs' Global Economics Group, based in New York City. At all relevant times, Youngdahl sat on the Goldman Sachs Treasury Desk in New York, where he advised traders on that desk, who were also based in New York, with respect to economic and political developments that affected their daily trading activity.

16. Steven E. Nothern, a resident of Scituate, Massachusetts, was at all relevant times a Senior Vice President at MFS, a Boston, Massachusetts-based investment management company adviser. Nothern's duties included management of seven fixed income mutual funds with a combined net asset value, at the relevant time, of approximately $4 billion, including a fund that invested in Treasury issues and other high-grade, fixed income securities.

## FACTUAL ALLEGATIONS

### Davis Promised to Provide his Clients "Advance Information"

17. Davis marketed himself to Wall Street clients by claiming to have special access to Washington insiders. Beginning in early 2000, Davis sent an advertising brochure to prospective clients in which he asserted that "11 years on Capitol Hill and 16 years advising Wall Street clients have taught me how to get Washington information ahead of the media;" that "[my] ability to generate such information, before it reaches the media, derives from relationships built over 26 years of working with Washington policymakers;" and that "[a]dvance information is only half the battle. The other half is supplying the judgment to turn advance information into an investment idea. Unless the papers are wrong, I avoid current news. My clients pay me for the first call on investment issues they care about."

18. In a later version of the brochure, Davis claimed that his numerous "relationships" in Washington allow him to make accurate "predictions" about executive and judicial decisions. In particular, Davis there stated that, on September 27, 2000, he accurately predicted that Treasury would not change indexed bond payments, and that, "[t]wo days later, Treasury made it official."

19. During the relevant period, Davis communicated with his clients by near-daily e-mails, telefax, and telephone calls that both Davis and his clients initiated. Each Monday morning, Davis e-mailed his clients a weekly calendar of Washington events.

### Youngdahl Was Davis' Primary Contact at Goldman Sachs

20. Youngdahl first met Davis in mid-February 2001. At that meeting, Davis explained to Youngdahl, among other things, that he knew people at the Treasury Department. Davis also gave Youngdahl a sales brochure. Davis told Youngdahl that he had good contacts and could provide information about developments in Congress and in the administration.

21. Subsequently, in May 2001, Davis e-mailed a promotional brochure for his firm, Davis Capital Investment Ideas, to Youngdahl, who then forwarded it to others at Goldman Sachs. Davis' brochure states, in part, "My ability to generate . . . information, before it reaches the media, derives from relationships built over 26 years of working with Washington policymakers." It further states, "Advance information is only half the battle. The other half is supplying the judgment to turn advance information into an investment idea. Unless the papers are wrong, I avoid current news. My clients pay me for the first call on investment issues they care about."

22. Youngdahl recommended that Goldman Sachs retain Davis, and Goldman Sachs retained Davis in reliance on Youngdahl's recommendation. Thereafter, from Spring 2001 through October 2001, Youngdahl was Davis' primary contact at Goldman Sachs. He received daily e-mails from Davis, periodically sent e-mails to Davis, and spoke to Davis by telephone approximately once a week. Davis knew that Youngdahl sat on a Goldman Sachs trading desk.

23. At this time, Goldman Sachs' former managing director (the "Treasury Desk Managing Director") who supervised, among others, the Treasury Desk, sat on the Treasury Department's Treasury Borrowing Advisory Committee ("TBAC"), which meets in Washington, D.C., in conjunction with Treasury refunding announcements, and advises Treasury on debt finance issues. Members of the TBAC may not discuss the contents, debates, or recommendations of the TBAC meetings with anyone other than other TBAC members or Treasury officers or employees until after Treasury publicly releases the refunding information.

24. Youngdahl understood that because the Treasury Desk Managing Director was a member of the TBAC, he was, in effect, "quarantined" from contact with the firm on the days of refunding announcements, and that, for this reason, the Treasury Desk Managing Director absented himself from the trading desk on such mornings, including on October 31, 2001. In fact, the Treasury Desk Managing Director stayed home on the morning of October 31, 2001, and he only called into the trading desk after he believed the refunding announcement had been made.

**Youngdahl and Davis Agreed to Violate the Federal Securities Laws**

25. In or about July 2001, Youngdahl and Davis reached an explicit agreement, memorialized by e-mails, pursuant to which Davis would provide to Youngdahl, before expiration of Treasury's embargoes, confidential information that Davis would procure at Treasury's quarterly refunding conferences.

**Nothern Was Davis' Primary Contact at MFS**

26. Nothern, who was Davis' primary contact at MFS, has known Davis since the mid-1990s. MFS first retained Davis sometime between 1995-1997. MFS paid Davis $12,000 per year for his services.

27. During the relevant time period, Davis sent Nothern e-mails approximately three times a week and periodic telefaxes including copies of Treasury refunding announcement press releases.

28. Nothern met with Davis at least twice in Washington, D.C. In January 1999 and again in January or February 2000, Nothern attended a day of meetings that Davis arranged between several of his clients and Federal government officials, including officials from Treasury.

**The 30-Year Treasury Bond**

29. Treasury, an Executive Department of the United States Government, issues and sells debt obligations of the Federal Government to finance government operations. Among the debt obligations Treasury has historically issued are bonds that mature at a term of 30 years.

30. The 30-year, or "long" bond was the longest-term Treasury issue. In the past, it served as an important benchmark for other United States Government issues and, directly or indirectly, for the bond market generally, and played a critical role in trading for a wide variety of other financial instruments. The vast majority of the trading volume of 30-year bonds occurs in the over-the-counter market.

31. The "par value" of a Treasury bond is its face amount, which usually differs from the price at which it is trading in the market. For example, a bond with a par value of $1,000 ($1,000 is the lowest denomination sold and is referred to as one bond) may sell for more or less than $1,000 depending on market factors. Treasury bonds are quoted and priced as a percentage of par value to the nearest 1/32 of one percent. For example if a $1,000 Treasury bond were priced at "100," it would actually sell at $1,000. At 9:30 a.m. on October 31, 2001, the asked price of the 30-year bond was 102 18/32 (usually written as 102-18), meaning that dealers were asking $1025.625 for a $1,000 bond, or 102.5625 percent of the par value of the bond. Put another way, a bond that sold at 102-18 would bring $102.5625 for each $100 of par value.

32. Public announcement that Treasury will suspend issuance of a particular maturity Federal Government bond drives up the price of outstanding bonds with that maturity because traders anticipate a shortage. Traders who know about the suspension in advance of the public announcement can realize enormous profit by purchasing the bonds before the announcement and selling immediately afterwards.

## **Information Disclosed at Treasury Refunding Press Conferences Is Confidential**

33. Each calendar quarter up to and including October 31, 2001, Treasury disclosed the Federal Government's financing requirements for the coming quarter in announcements at Treasury refunding press conferences. These announcements sometimes included details about Treasury's plans to issue or buy back its bonds in the coming quarter.

34. Treasury required that all persons granted access to the conference maintain the strict confidentiality of all information there disclosed -- that is, to respect and abide by the embargo on such information - until expiration of the embargo at a predetermined time announced during the refunding press conference.

35. All persons on Treasury property are, and during the relevant period were, required by law to abide by Treasury regulations, and to "comply with the instructions of Treasury guards, with official signs of a prohibitory or directory nature, and with the directions of other authorized officials." 31 C.F.R. 407.5. Violations are punishable by fine or imprisonment, or both. 31 C.F.R.§ 407.14. Authorized officials of the Treasury Office of Public Affairs ("Treasury Public Affairs") who conducted the refunding press conference at issue here explicitly announced to all attendees that an embargo was in effect.

36. A Federal criminal statute in effect during the relevant period, and still in effect, prohibits any person from converting to his/her own use or conveying without authority anything of value belonging to the United States (or any department thereof), upon penalty of fine or imprisonment for up to ten years or both. 18 U.S.C. §641.

37. Treasury embargoed the information disclosed at the refunding press conferences during the relevant period to ensure the accurate, uniform and orderly dissemination of refunding information and to preserve the integrity of the market for its debt issues by making certain that all market participants were afforded equal access to the same information at the same time.

38. Persons without Treasury or press credentials or a visitor's pass were not permitted to enter the Treasury building. Visitor's passes were granted only with the approval of a Treasury official for a visit at a particular time and for a specific purpose. Treasury Public Affairs also granted visitor's passes to non-credentialed members of the press for attendance at a specific event. In either case, the visitor was required to supply his or her name and date of birth or social security number for a background check by the Secret Service before the visitor's pass was issued.

39. On October 31, 2001, the Treasury refunding press conference was conducted behind closed doors at the Treasury building. Access was limited to government officials and those persons with press credentials or visitors' passes, and controlled by the Secret Service and Treasury Public Affairs.

**Davis Violated the Treasury Embargo of Prior Refunding Press Conferences**

40. Treasury first permitted Davis to attend refunding press conferences in 1994, pursuant to an explicit face-to-face agreement Davis made with a senior adviser in Treasury's Office of Federal Finance that Davis would preserve the confidentiality of and not disclose to anyone any embargoed information he learned by attending any refunding press conference. It was only by reason of this agreement that Treasury permitted Davis to attend refunding press conferences from approximately 1994 to 2001.

41. Pursuant to his agreement with Treasury, Davis was permitted entry to refunding press conferences by requesting a visitor's pass via telephone call to the Office of Market Finance at Treasury's Office of Federal Finance. On each such request, Davis was required to provide his name and date of birth to a Treasury administrative official before he was issued the pass. By this procedure, Davis gained admittance to and attended the refunding press conferences on May 2, 2001 and August 1, 2001.

42. On May 2, 2001, after gaining admittance to the Treasury refunding press conference, Davis placed a telephone call to and reached Youngdahl minutes before the public release of confidential Treasury information disclosed at the refunding press conference. In that conversation, Davis communicated to Youngdahl the size of the auctions that Treasury had disclosed it would offer to the market. This information was the precise information released to the public in official Treasury announcements later in the day. Youngdahl relayed the confidential information he received from Davis to a senior manager on Goldman Sachs' Treasury Desk.

43. On August 1, 2001, Davis again gained admittance to the Treasury refunding press conference. This time, pursuant to Davis' explicit July 2001 agreement to provide to Youngdahl confidential information he learned at Treasury's quarterly refunding conferences before expiration of Treasury's embargoes, and in conformity with their prior practice, Davis again placed a telephone call to and reached Youngdahl minutes before public release of confidential Treasury information.

44. In that conversation, Davis again told Youngdahl the size of the auctions that Treasury had disclosed it would offer to the market. This information was, again, the precise information later released to the public in an official Treasury announcement. Youngdahl again relayed the

confidential information he received from Davis to a senior manager on Goldman Sachs' Treasury Desk.

45. On May 2, 2001, and also on August 1, 2001, when Youngdahl received the described information about Treasury refunding announcements from Davis, Youngdahl knew that Treasury refunding announcements were subject to an embargo and that Treasury intended that the information disclosed in the refunding press conferences remain nonpublic and confidential until Treasury publicly released the information.

46. On October 31, 2001, Davis obtained a visitor's pass in the manner described above, and was granted entry to the Treasury building consistent with his usual practice.

47. Had Davis at any time or in any manner disclosed that he did not intend to or would not obey Treasury's embargo on information disclosed at the refunding press conferences he was permitted to attend, he would have been denied entry to the Treasury building and denied admission to the refunding press conferences.

**Davis Attended the October 31, 2001 Refunding Press Conference**

48. On October 30, 2001, Treasury Public Affairs issued a press release stating that a refunding press conference would take place the next day, and that the announcement would be embargoed until 10:00 a.m. on October 31, 2001.

49. On October 31, 2001, at 9:00 a.m., the refunding press conference began in the "Diplomat" conference room on the third floor of the Treasury building. Davis was in attendance, along with approximately 30 to 50 other persons.

50. The spokesperson for Public Affairs, from the podium, instructed all attendees to turn off cell phones and pagers, and directed that the doors be closed. She announced that an embargo was in effect immediately and that it would remain in effect until 10:00 a.m. She then introduced the speaker, Undersecretary of the Treasury Peter Fisher, and advised that Fisher would take questions after his statement until 9:40 a.m., and again stated that the embargo would expire at 10:00 a.m.

51. A hard copy of the press release was then distributed to the attendees. Fisher read a prepared statement containing the substance of the press release, including the information that Treasury would suspend issuance of the 30-year bond. Fisher then took questions from the press. Following the Q&A session, the Treasury spokesperson again - for the third time - cautioned attendees to observe the embargo until its expiration at 10:00 a.m. The refunding press conference lasted from approximately 9:00 a.m. to 9:25 a.m.

52. Treasury officials clearly and repeatedly announced to all persons present at the refunding press conference that the information made available to them there was embargoed until 10:00 a.m. The spokesperson announced the embargo and its expiration time no fewer than three separate times. The embargo time had also been announced in the prior day's press release.

53. Davis, despite these warnings, and in violation of his explicit prior agreement with a Treasury official to abide by the embargo, failed to observe the embargo. Between the time he left the October 31, 2001 refunding press conference and 9:43 a.m., Davis made at least nine cellular telephone calls to eight of his clients. Davis placed those calls at 9:28 a.m., 9:32 a.m., 9:33 a.m., 9:34 a.m., 9:35 a.m., 9:37 a.m., 9:38 a.m., 9:39

a.m., and 9:41 a.m. Davis placed the call to Youngdahl at 9:35 a.m. and to Nothern at 9:38 a.m.

54. At 9:43 a.m., an employee of the Treasury Public Affairs office inadvertently posted the refunding announcement press release on the Treasury website.

55. At 9:57 a.m., Reuters news service reported on its newswire: "US TREASURY SAYS DISCONTINUING SALES OF REGULAR, INDEXED 30-YEAR BONDS."

Davis, however, believed the embargo would remain in effect until 10:00 am. Despite that belief, and in violation of the directions of Treasury officials and his prior explicit agreement with a Treasury official to abide by the embargo, Davis placed eight cell phone calls to six additional clients before 10:00 a.m., the time he was advised by Treasury that the embargo would expire.

## **Davis Tipped Youngdahl With Confidential Treasury Information**

56. On September 28, 2001, approximately one month prior to the October 31, 2001, Treasury refunding press conference, Youngdahl and other Goldman Sachs economists had published a written report entitled "U.S. Economics Analyst" in which Youngdahl predicted that Treasury would continue issuing the 30-year bond.

57. On October 31, 2001, shortly before 9:30 a.m., Youngdahl advised employees on Goldman Sachs' Treasury Desk that Goldman Sachs' public position continued to be that Treasury would continue issuing the 30-year bond.

58. During the telephone call Davis placed to Youngdahl at 9:35 a.m. on October 31, 2001, Davis told Youngdahl that Treasury would suspend sales of the 30-year bond and 30-year TIPS (Treasury Inflation Protected Securities), and would change its buyback program currently in effect.

59. Because Davis knew, inter alia, that Youngdahl sat on a Goldman Sachs trading desk, Davis knew, recklessly disregarded, or should have known that Youngdahl would tip others to trade 30-year bonds.

60. Immediately upon receiving Davis' tip, Youngdahl suddenly reversed his position that Treasury would continue to issue the 30-year bond, and abandoned the prediction he had publicly announced as recently as shortly before 9:30 a.m. that morning. Youngdahl immediately interrupted his conversation with Davis, placed Davis' call on hold, turned to a Senior Trader, who was seated nearby, and instructed him, "I wouldn't be short bonds if I were you." At least one other trader on Goldman Sachs' Treasury Desk heard this statement. A trader is "short" a security when he/she has no inventory but has sold that security in the expectation that the price will fall and he/she will be able to profit by purchasing the security he owes at the lower price. In effect, Youngdahl told the Senior Trader that the price of bonds would rise.

61. After conveying his advice to the Senior Trader based on Davis' tip, Youngdahl returned to his telephone conversation with Davis and requested that Davis repeat the information he had just conveyed to Youngdahl.

Immediately after Youngdahl concluded his telephone conversation with Davis, Youngdahl informed the Senior Trader that it was Davis who had just called Youngdahl. Youngdahl communicated to the Senior Trader and at least one other Goldman Sachs' Treasury Desk trader the content of the tip he had received from Davis. Youngdahl also told the Senior Trader that

Davis' tip led him to believe that his prior forecast that Treasury would continue to issue the 30-year bond was wrong.62.

63. Youngdahl conveyed the information he received in the Davis telephone call to the Senior Trader and at least one other Goldman Sachs' Treasury Desk trader because Youngdahl considered that information to be timely, accurate, and significant to the traders' decisions whether to buy, sell, or hold bonds.

64. Youngdahl knew, recklessly disregarded, or should have known that the information Davis communicated to him was confidential nonpublic Treasury information, which Davis communicated to him in breach of Davis' duty to Treasury. Youngdahl knew that Treasury refunding information was subject to an embargo and that Treasury intended that the October 31, 2001 embargo on that information would remain in effect until 10:00 am. Youngdahl also knew, recklessly disregarded, or should have known, pursuant to his July 2001 agreement with Davis, that Davis attended the Treasury's refunding press conference on October 31, 2001, and that Davis tipped him with embargoed Treasury refunding information prior to the end of the embargo period. Youngdahl knew, recklessly disregarded, or should have known that by tipping the Goldman Sachs Treasury Desk traders with the information from Davis about Treasury's plans to suspend issuance of the 30-year bond, they would trade in 30-year bonds.

65. Between 9:35 a.m. on October 31, 2001, when Davis called Youngdahl, and 9:43 a.m., when news that Treasury has suspended issuance of the 30-year bond was inadvertently posted on Treasury's web site, Goldman Sachs' Treasury Desk purchased $84 million in par value of 30-year bonds, realizing a profit of $1,576,561 on the trades. The Goldman Sachs Treasury Desk traders made these purchases after Youngdahl tipped them with the Davis information.

**<u>Davis Tipped Nothern With Confidential Treasury Information</u>**

66. At approximately 9:38 a.m. on October 31, 2001, Davis telephoned Nothern and left Nothern a voicemail message that (a) Peter Fisher had informed Davis that Treasury would cancel the 30-year bond; (b) Treasury would release a press announcement of the cancellation at 10:00 a.m.; and (c) the news was under embargo until that time.

67. Davis knew, recklessly disregarded, or should have known that Nothern would trade on the material nonpublic information Davis conveyed to Nothern or that Northern would tip others to trade 30-year bonds.

68. Almost immediately, Nothern retrieved and listened to the voicemail message. Nothern knew (a) that Peter Fisher was an official at Treasury in the debt finance area who had access to information of this nature; (b) that Treasury refunding announcements conveyed market sensitive information; and (c) the meaning and nature of an embargo.

69. Immediately upon hearing Davis' message, Nothern told three other MFS portfolio managers that he had just received a voicemail message from Davis, a Washington, D.C. consultant, that Treasury would cancel the 30-year bond.

70. While in possession of the material nonpublic information Davis provided, Nothern purchased $25 million in par value of 30-year bonds and tipped three other portfolio managers who purchased $25 million, $10 million, and $5 million in par value of 30-year bonds, respectively, before 9:43 a.m. As a result of their bond purchases, Nothern and the three other MFS portfolio managers made profits of $3.1 million for the portfolios they managed.

71. At approximately 9:51 a.m., Northern made an additional $14.25 million purchase of bonds for the portfolios he managed.

72. Later that same day, supervisors in the MFS fixed-income research department asked Nothern "if Davis had said that this [information] was embargoed and that you couldn't trade on it." Nothern replied, "no." But Nothern later admitted in sworn testimony before the Commission that Davis had in fact informed him about the embargo in the October 31, 2001 voicemail message.

**Davis Tipped Youngdahl and Nothern With Material Nonpublic Information**

73. Davis' tips to Youngdahl and Nothern that sales of the 30-year bond would be suspended were material and nonpublic. There was a substantial likelihood that, under all the circumstances, knowledge of suspension of sales of the 30-year bond would have assumed actual significance in the deliberations of a reasonable investor.

74. Knowledge of suspension of sales of the 30-year bond in fact assumed actual significance in the deliberations of Youngdahl, the Senior Trader and other traders on the Goldman Sachs Treasury Desk who Youngdahl tipped, Nothern, and the MFS portfolio managers who Nothern tipped. The Senior Trader, other traders on Goldman Sachs' Treasury Desk, Nothern, and three other MFS portfolio managers each invested millions of dollars immediately upon receipt of and in reliance on the Davis tip.

75. When news of suspension of the 30-year bond was made public, it materially affected the price of outstanding 30-year bonds. Between 9:30 a.m. on October 31, 2001 and 9:44 a.m. (one minute after Treasury posted the news to its web site), the asked price of the 30-year bond increased from 102-18 to 102-23. At 9:57 a.m., when the Reuters newswire reported the news, the asked price increased again to 103-12. The asked price reached a high of 108-18 at 12:59 p.m. and closed at 107-25. This was the largest one-day rally in price of the 30-year bond since the stock market crash of 1987. The rally was caused by news of Treasury's suspension of issuance and sales of the 30-year bond.

**Davis Acted With Intent to Deceive, Manipulate or Defraud**

76. Davis tipped Nothern and Youngdahl with intent to deceive, manipulate or defraud. He knew that news of suspension of the 30-year bond was embargoed until 10:00 a.m. on October 31, 2001. He wrongfully misappropriated confidential material nonpublic Treasury information for his own personal benefit. He violated his agreement to respect and abide by Treasury embargos for his own personal benefit. He knew, recklessly disregarded, or should have known that his tips to Youngdahl and Nothern for his own personal benefit violated his duty to Treasury. He knew, recklessly disregarded, or should have known that, by tipping Youngdahl and Nothern, he wrongfully converted information about suspension of the 30-year bond to his own use and illegally conveyed such information without authorization for his own personal benefit.

77. Davis violated the October 31, 2001 embargo, his agreement to abide by the embargo, his duty to Treasury, Federal criminal law prohibiting conversion of Government property, and federal regulations requiring him to obey the instructions of Treasury officials at the refunding press conference, when he misappropriated confidential nonpublic Treasury information he learned at the refunding announcement press conference and telephoned 13 of his clients to communicate that information in the 32 minutes before news of suspension of the 30-year year bond was intended

for public release, eight of whom he called in a 15-minute period before Treasury inadvertently posted the information to its website.

**Davis Benefited Personally by Tipping the Misappropriated Information**

78. Davis benefited personally by tipping Youngdahl and Nothern to the information he misappropriated from Treasury. Davis was in the business of selling information he characterized as "ahead of the media . . . the first call on investment issues" to broker-dealers, financial analysts, and other investors. Davis demonstrated, by his illegal tips, that he could procure and provide significant nonpublic information for clients, thereby enhancing his business stature and his potential ability to attract new clients and realize greater fees.

**Davis Violated a Duty of Trust and Confidence He Assumed by Agreeing to Maintain as Confidential the Material Nonpublic Information He Gained Access to at the Refunding Press Conference**

79. Rule 10b5-2(b)(1), 17 C.F.R. § 240.10b5-2(b)(1), provides that a duty of trust and confidence exists for purposes of Section 10(b) of the Exchange Act and Rule10b5 thereunder "whenever a person agrees to maintain information in confidence."

80. In or about 1994, Davis agreed and promised, in a face-to-face meeting with a Treasury official, that Davis would obey and abide by all Treasury embargos on information disclosed at Treasury refunding press conferences, if he were permitted to attend such conferences.

81. Davis violated that duty of trust and confidence he owed to Treasury and to the United States Government by communicating information disclosed at the October 31, 2001 Treasury refunding press conference to Youngdahl and Nothern before the Treasury embargo on that information had expired.

**Davis Violated a Duty Imposed on Him by Federal Criminal Statute**

82. A United States criminal statute at 18 U.S.C. § 641 provides that any person who "knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any . . . thing of value of the United States or of any department or agency thereof . . . Shall be fined under this title or imprisoned not more than ten years, or both."

83. For purposes of 18 U.S.C. § 641, information is a "thing of value."

84. Davis violated 18 U.S.C. § 641 by knowingly converting to his use, to Youngdahl's use, and to Nothern's use Treasury's confidential information he learned at the Treasury refunding press conference. Davis violated 18 U.S.C. § 641 by disposing of and conveying that confidential information to Youngdahl and Nothern without authority.

**Youngdahl Knew, Recklessly Disregarded, or Should Have Known That Davis Tipped Him in Breach of a Duty Davis Owed Treasury**

85. Youngdahl knew, recklessly disregarded, or should have known that Davis tipped him with confidential information about the suspension of the 30-year bond that Davis obtained in breach of his duty to the Treasury. While in possession of the nonpublic information from Davis, Youngdahl tipped the Goldman Sachs Treasury Desk Traders who then purchased 30-year bonds as described above.

86. Youngdahl knew that the information he received from Davis was nonpublic. Davis and Youngdahl had previously agreed that Davis would attend Treasury refunding press conferences and provide to Youngdahl confidential nonpublic Treasury information before such information was publicly released. Davis had previously provided Youngdahl with such nonpublic information Treasury disclosed at the May 2, 2001 and August 1, 2001 refunding announcements, prior to expiration of the embargos on such information. Davis provided to Youngdahl confidential nonpublic information that Treasury disclosed at the October 31, 2001 refunding press conference pursuant to Davis' and Youngdahl's July 2001 agreement.

87. Based on Davis' tip, Youngdahl suddenly and completely reversed his publicly announced position that Treasury would continue to issue and sell the 30-year bond, and immediately conveyed the information to the Senior Trader and other Goldman Sachs' Treasury Desk traders when he knew, recklessly disregarded, or should have known that they would trade on the information. The Goldman Sachs traders then purchased 30-year bonds as described above.

**Nothern Knew, Recklessly Disregarded, or Should Have Known That Davis Tipped Him in Breach of a Duty Davis Owed Treasury**

88. Nothern knew, recklessly disregarded, or should have known that Davis tipped him with confidential information about the suspension of the 30-year bond that Davis obtained in breach of his duty to the Treasury. While in possession of the nonpublic information from Davis, Nothern purchased 30-year bonds and also tipped the three other MFS portfolio managers when he knew, recklessly disregarded, or should have known that they would trade on the information. The three other MFS portfolio managers then purchased 30-year bonds as described above.

89. Nothern knew that the information he received from Davis was nonpublic and that it was embargoed until 10 a.m.

90. Nothern knew that Davis obtained the information he communicated to Nothern from Peter Fisher, a Treasury official with access to information concerning Treasury's issuance of debt securities.

## COUNT I

**Davis Violated Exchange Act Section 10(b), and Rule 10b-5**

91. Paragraphs 1 through 90 inclusive are incorporated here by reference

92. By reason of the foregoing, Davis violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

## COUNT II

**Youngdahl Violated Exchange Act Section 10(b) and Rule 10b-5**

93. Paragraphs 1 through 87 inclusive and 91 through 92 inclusive are incorporated here by reference.

94. By reason of the foregoing, Youngdahl violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

## COUNT III

**Nothern Violated Exchange Act Section 10(b) and Rule 10b-5**

95. Paragraphs 1 through 84 inclusive and 88 through 92 inclusive are incorporated here by reference.

96. By reason of the foregoing, Nothern violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

## PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

(A) Enjoin Davis, Youngdahl, and Nothern, and each of them, from further violating Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

(B) Order Davis and Youngdahl, jointly and severally with such other entities who consent or have consented or may be ordered to do so, to disgorge the approximately $1.6 million in trading profits that Goldman Sachs realized for its own account as a result of Youngdahl's tip to Goldman Sachs' Treasury Desk traders who then traded in 30-year bonds, plus prejudgment interest thereon;

(C) Order Northern to disgorge the approximately $3.1 million in trading profits made by the MFS portfolios Nothern managed as a result of his trading in 30-year bonds while in possession of the material nonpublic information Davis provided him, and by other MFS managers who traded in 30-year bonds after Nothern tipped them with the information Davis provided, plus prejudgment interest thereon;

(D) Order Davis to pay a civil money penalty pursuant to Section 21A(a) of the Exchange Act 15 U.S.C. § 78u-1(a);

(E) Order Youngdahl and Nothern, and each of them, to pay a civil money penalty pursuant to Section 21A(a) of the Exchange Act 15 U.S.C. § 78u-1(a); and

(F)Grant such other and further relief as to the Court may seem just and equitable.

Dated: September 4, 2003 Respectfully submitted,

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