Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—S.D.N.Y.: SEC charges Banco Santander adviser and friend with insider trading, (Jul. 30, 2013)

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The SEC announced it has charged a former adviser at Banco Santander, S.A. with violating the federal securities laws after he used nonpublic information about a proposed takeover to purchase and sell securities, netting him over $900,000. The SEC also alleged that he tipped a friend about the proposed acquisition (*SEC v. Maillard*, July 30, 2013).

Background. Cedric Cañas Maillard was the technical cabinet adviser to the CEO of Santander. During the course of his work, he learned that Santander had been asked to serve as a financial advisor and help underwrite a proposed acquisition of Potash Corporation by multinational mining company BHP Billiton. Under the unsolicited offer, BHP would purchase all of Potash's stock for $38.6 billion.

Purchase of securities based on inside information. According to the SEC's complaint, Cañas learned of the proposed acquisition on August 5, 2010, when he received a copy of an acquisition memo. On August 11, he attended a meeting with Santander executives who discussed the Potash acquisition, including the timing of the deal. Between August 9 and 13, Cañas purchased 30,000 Potash equity contracts-for-difference (CFDs) through his Internaxx, S.A. brokerage account. Cañas was entirely leveraged in his CFD positions because he did not pay Internaxx any portion of the value underlying the share price, according to the SEC's complaint.

Cañas tips his friend. The SEC alleged that Cañas informed his close friend Julio Marín Ugedo about the proposed takeover. Having learned about the acquisition, Marín purchased nearly 1,400 shares of Potash common stock through two Spanish brokerage accounts. Marín admitted that he discussed investing in Potash with Cañas in August 2010 prior to purchasing Potash stock, according to the SEC.

Offer becomes public. BHP's CEO had met with Potash's CEO on August 12 to present BHP's proposal to acquire Potash. Potash's CEO said that Potash was not for sale, and Potash's board of directors voted to reject the offer on August 13. On August 17, Potash publicly announced that it had received and rejected BHP's unsolicited offer to purchase the common stock of Potash at $130 per share, a 16 percent premium over the previous day's closing price. Following the announcement, Potash's share prices drastically increased, closing at $143.17, up $31.02 from the previous day's closing price. The following day, BHP announced a hostile bid for Potash shares, although the proposed acquisition did not take place.

Cañas and Marín profit. According to the SEC, Cañas liquidated his entire Potash CFD position after the stock price soared, realizing a net profit of over $900,000. Marín also sold his shares for a net profit of more than $40,000.

SEC charges. The SEC charged Cañas and Marín with violating Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 due to their actions in profiting from material, nonpublic information. The SEC's complaint, filed in the U.S. District Court for the Southern District of New York, requests a final judgment ordering Cañas and Marín to disgorge all ill-gotten gains and to pay civil penalties. The SEC also requests permanent injunctions against the defendants.

The case is No. 13 Civ 5299.

Attorneys: Frank D. Goldman for SEC.

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