

Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: Jury convicts Martoma of insider trading, (Feb. 6, 2014)

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A Manhattan jury today convicted Mathew Martoma on three counts of insider trading in a case that arose from the alleged expert network connections at SAC Capital and its related entities. The jury found Martoma guilty of conspiracy to commit securities fraud and of one count each of securities fraud regarding the stock of Elan Corporation, plc (Elan) and Wyeth, according to the verdict form.

A statement by Manhattan U.S. Attorney, Preet Bharara, likened Martoma's trading to a student having an advance copy of the exam answers. "As the jury unanimously found, Mathew Martoma cultivated and purchased the confidence of doctors with secret knowledge of an experimental Alzheimer's drug, and used it to engage in illegal insider trading." Bharara added, "In the short run, cheating may have been profitable for Martoma, but in the end, it made him a convicted felon, and likely will result in the forfeiture of his illegal windfall and the loss of his liberty."

The conspiracy charge against Martoma has a maximum prison sentence of 5 years, while he faces 20 years in prison for each securities fraud charge. Monetary fines could reach \$250,000 for the conspiracy charge, and up to \$5 million for each fraud charge, but the amounts could be alternatively calculated at twice the gross gain or loss derived from the crimes, said a separate press release from the U.S. Attorney's office in Manhattan.

Expert network. Martoma was indicted by a grand jury in December 2012 and charged with three counts of insider trading. According to the indictment, Martoma was a portfolio manager for an unnamed hedge fund (CR Intrinsic Investors, LLC (CR Intrinsic), a division of S.A.C. Capital) and focused his investment strategy on the health care sector. Martoma allegedly learned of material, non-public information about the results of a clinical trial of a new Alzheimer's disease drug that was being jointly developed by Elan and Wyeth. Martoma's information came from various members of a so-called expert network, including a neurology professor at a top medical school.

Martoma allegedly used the drug trial data to buy and sell Elan and Wyeth shares based upon his assessment of the impact the information would have on the companies' shares once it became public. Although Martoma allegedly initially told the hedge fund to buy these companies' shares, upon learning of a negative clinical result, Martoma then allegedly told the hedge fund to sell nearly \$700 million of Elan and Wyeth shares. The hedge fund also took short positions and traded related options to enhance its profits from a post-publication stock drop. Once the negative result became public, Elan's shares fell 42 percent and Wyeth's shares fell 12 percent.

The alleged insider trading scheme began in 2006 and lasted until mid-2008. The hedge fund's profits and avoided losses on the Elan and Wyeth trades totaled nearly \$276 million. Martoma allegedly received a \$9.3 million bonus.

Martoma had tried unsuccessfully late last year to get the criminal conspiracy and fraud charges dismissed regarding the Elan stock trades. The district court rejected Martoma's argument that trades in Elan's American Depository Receipts were extraterritorial transactions that were beyond the reach of U.S. securities laws.

Related actions. CR Intrinsic agreed last year to settle related civil charges brought by the SEC for over \$600 million. The settlement, the largest in an insider trading case, was announced on the same day the SEC filed an amended complaint updating its 2012 charges against CR Intrinsic. The Southern District of New York court, troubled by the "neither admit nor deny" provision in the settlement, issued an opinion conditionally approving of the settlement with CR Intrinsic Investors on April 16, 2013, making the approval contingent on the outcome of the *S.B.C. v. Citigroup Global Markets, Inc.* appeal to the Second Circuit.

S.A.C. Capital Advisors, LP (S.A.C. Capital Advisors) entered a guilty plea to two of the criminal charges brought against itself, S.A.C. Capital Advisors, LLC, CR Intrinsic, and Sigma Capital Management LLC. The charges arose from the acts of two of S.A.C. Capital Advisors' former employees.

The case is No. 12 Cr. 973 (PGG).

Companies: CR Intrinsic Investors, LLC; S.A.C. Capital; S.A.C. Capital Advisors, LP; S.A.C. Capital Advisors, LLC; Sigma Capital Management LLC; Elan Corporation, plc; Wyeth

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