

## Securities Regulation Daily Wrap Up, ENFORCEMENT—SEC: \$600 Million Settlement Reached in Insider Trading Case Involving SAC Capital, (Mar. 15, 2013)

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By Matthew Garza, J.D.

The SEC announced today that hedge fund CR Intrinsic Investors, an affiliate of S.A.C. Capital, will pay \$601,747,463.22 to settle charges that in July of 2008 it traded ahead of a negative public announcement regarding clinical trial results for an Alzheimer's drug. The fund made profits and avoided losses of approximately \$275 million by repositioning its holdings in two pharmaceutical companies, the Irish biotech company Elan and New Jersey pharmaceutical Wyeth, to liquidate long positions worth over \$700 million while simultaneously taking short positions in the stocks. In the complaint the SEC provided detailed information about phone calls, meetings and other communications between a doctor involved in the clinical trials and the hedge fund's portfolio manager leading up to an announcement of the results. The settlement amount totals \$274,972,541 in disgorgement, \$51,802,381.22 in prejudgment interest, and a \$274,972,541 penalty (*SEC v. CR Intrinsic Investors, LLC*, March 15, 2013).

"The historic monetary sanctions against CR Intrinsic and its affiliates are sharp warning that the SEC will hold hedge fund advisory firms and their funds accountable when employees break the law to benefit the firm," said George Canellos, Acting Director of the SEC's Division of Enforcement. The SEC also provided a graphic showing the flow of information in the scheme.

The fund began selling its stock about a week before the July 29, 2008 release of the full results of clinical trials on the drug. The market reacted negatively to the results, sending Elan share prices down 42% and Wyeth shares down 12%. The SEC said the fund profited approximately \$75 million from short sales in the pharmaceutical companies' stocks, over \$5 million from options trades, and avoided losses of over \$194 million.

**Communications between fund manager and doctor.** In addition to the hedge fund the complaint named as defendants Mathew Martoma, who served as portfolio manager at CR Intrinsic between 2006 and 2010, and Dr. Sidney Gilman, a professor of neurology at the University of Michigan Medical School and consultant to Elan and Wyeth. Gilman served as chairman of the Safety Monitoring Committee (SMC) overseeing the clinical trial, and also presented the full Phase II Trial results on July 29, 2008. Gilman had access to the full results approximately two weeks prior to the announcement, according to the complaint.

The SEC said Gilman began to provide Martoma material non-public information in 2007, calling him after SMC meetings with Elan to discuss what he had learned. The SEC complaint alleged that Gilman consulted with Martoma on February 9, 2007, the day after an SMC meeting, October 9, 2007, less than three hours after an SMC meeting, and March 18, 2008, three hours after an SMC meeting, among other communications.

In the weeks leading to the July 29 announcement, the SEC said Gilman provided Martoma material nonpublic information regarding the trial's safety and efficacy results in phone calls. Late in the afternoon on July 17, 2008, Gilman and Martoma had another lengthy phone call during which Gilman provided Martoma with detailed results of the Phase II Trial and sent him a 24-page PowerPoint presentation provided by an Elan officer containing summaries of the detailed efficacy and safety results due to be presented publicly on July 29. On July 20, Martoma phoned another portfolio manager and said he was no longer "comfortable" with the Elan investments, and the following day the hedge fund began to sell its Elan and Wyeth securities.

**Relief.** In addition to disgorgement and penalties, the Commission sought to permanently enjoin the hedge fund and Martoma from violations of 10(b) of the Exchange Act and Rule 10b-5. The settlement is subject to the

approval of Judge Victor Marrero of the U.S. District Court for the Southern District of New York. Dr. Gilman was subjected to disgorgement, prejudgment interest, and a permanent injunction in a consent judgment previously entered by the court. Litigation against Martoma continues.

Companies: Elan Corporation, plc; Wyeth; CR Intrinsic Investors, LLC; CR Intrinsic Investments, LLC; S.A.C. Capital Advisors, LLC; S.A.C. Capital Associates, LLC; S.A.C. International Equities, LLC; S.A.C. Select Fund, LLC.

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