

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH FRANK VACANTE,

Defendant.

Case No. 19-cv-1616

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“Commission”) alleges as follows:

SUMMARY

1. This action involves illegal insider trading in the securities of Trinity Biotech plc (“Trinity”) by Joseph Frank Vacante prior to an October 4, 2016 public announcement that Trinity had decided to withdraw from consideration with the United States Food and Drug Administration (“FDA”) a 510(k) premarket notification submission. The 510(k) premarket notification sought FDA permission for U.S. commercial distribution of Trinity’s Meritas Troponin-I Test and Meritas Point-of-Care Analyzer (“Meritas products”) for use in the diagnosis of myocardial infarctions. At all times relevant to this Complaint, Vacante was employed by Trinity.

2. By engaging in the conduct described above, Vacante violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5

[17 C.F.R. § 240.10b5] promulgated thereunder, and, unless enjoined, will continue to employ devices, schemes, or artifices to defraud and engage in transactions, acts, practices, and courses of business similar to those alleged in this complaint.

3. The Commission seeks a final judgment enjoining Vacante from future violations of these same provisions of law, ordering Vacante to pay full disgorgement of his losses avoided, plus prejudgment interest thereon, and ordering Vacante to pay a civil monetary penalty.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77v(a)] and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1(a)(1), and 78aa]. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], because certain of the acts or transactions constituting the violations of the federal securities laws alleged herein occurred within the Southern District of New York, including that Vacante sold his ADRs through a broker located in Manhattan.

5. Vacante made use of the means and instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

DEFENDANT

6. Vacante, age 58, is a United States citizen who resides in Shavertown, Pennsylvania. At all times relevant to this Complaint, he was Trinity's General Manager for North America.

RELATED ENTITY

7. Trinity is incorporated as a public limited company in the Republic of Ireland and headquartered in Bray, County Wicklow, Ireland. Trinity specializes in the development, manufacture and marketing of clinical diagnostic products. Class A shares underlying Trinity's American Depository Receipts ("ADRs") are registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)], and its ADRs are listed on the NASDAQ Global Market under the symbol "TRIB."

FACTUAL ALLEGATIONS

8. On September 26, 2016, Vacante exercised employee stock options. Concurrently with the exercise, Vacante placed a limit order for the sale of the resulting 10,834 Trinity ADRs at \$16.05 per ADR. Trinity's ADRs traded above this price during the relevant time-period. Accordingly, no ADRs were sold pursuant to this limit order.

9. Between 9:00 and 9:30 a.m. EDT on September 29, 2016, Trinity and the FDA held a telephonic meeting concerning Trinity's then-pending 510(k) premarket notification for the Meritas products. On that call, the FDA recommended that Trinity withdraw the premarket notification.

10. In his position as Trinity's General Manager for North America, Vacante had been preparing for the roll out of the Meritas products in the United States. He believed that the Meritas products represented the future of the company.

11. At 11:40 a.m. EDT on September 29, 2016, Vacante received a call from an Executive Vice President for Trinity. On that call, the Executive Vice President informed Vacante of the FDA's recommendation and told Vacante to cease his preparations for the Meritas roll out.

12. Between 12:12 p.m. EDT and 12:23 p.m. EDT on September 29, 2016, Vacante communicated with a broker at Morgan Stanley Wealth Management in order to reduce the limit price of his 10,834 Trinity ADRs to \$13.05.

13. Vacante subsequently canceled the limit order and, in a 1:48 p.m. EDT email, instructed the broker to sell all of his remaining Trinity ADRs at market price.

14. Vacante sold 10,834 Trinity ADRs on September 29, 2016 on the basis of material, non-public information that he obtained in the course of his employment with Trinity in breach of his duty to Trinity's shareholders, for total proceeds of more than \$140,000.

15. On October 4, 2016, prior to the opening of U.S. financial markets, Trinity announced that it was withdrawing the 510(k) premarket notification for the Meritas products.

16. On October 4, 2016, Trinity ADRs closed at \$6.46 per ADR, which was approximately 50% lower than the prior day's closing price of \$12.99.

17. The aggregate loss Vacante avoided by selling his ADRs prior to the October 4, 2016 announcement was more than \$70,000.

FIRST CLAIM FOR RELIEF
(Section 17(a) of the Securities Act)

18. Paragraphs 1 through 17 are re-alleged and incorporated by reference herein.

19. Vacante, by use of the means or instrumentalities of interstate commerce or of the mails, in the offer or sale of Trinity securities, directly or indirectly, with scienter, employed devices, schemes, or artifices to defraud, and engaged in acts, practices, or courses of business which would operate as a fraud or deceit upon a purchaser, by selling Trinity ADRs on the basis of material, non-public information in breach of his duty to Trinity's shareholders.

20. By reason of the foregoing, Vacante violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
(Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

21. Paragraphs 1 through 17 are re-alleged and incorporated by reference herein.

22. Vacante, with scienter, by use and means or instrumentalities of interstate commerce or the mails or a facility of a national securities exchange, in connection with the purchase or sale of Trinity securities, directly or indirectly, employed devices, schemes, or artifices to defraud, and engaged in acts, practices, or courses of business which would operate as a fraud or deceit upon a purchaser, by selling Trinity ADRs while in possession of material, non-public information in breach of his duty to Trinity's shareholders.

23. By reason of the foregoing, Vacante violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

- A. Permanently restraining and enjoining Vacante from directly or indirectly engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];
- B. Ordering Vacante to disgorge the avoided losses derived from the illicit trading alleged herein, plus prejudgment interest on that amount;
- C. Ordering Vacante to pay a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

D. Granting such other and further relief as the Court may deem just, equitable, and necessary.

Dated: February 21, 2019
Washington, DC

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

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