

**RICHARD R. BEST  
REGIONAL DIRECTOR  
SANJAY WADHWA  
WENDY B. TEPPERMAN  
RICHARD HONG  
ERIC C. KIRSCH  
MICHAEL C. ELLIS  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, New York 10281-1022  
(212) 336-0956 (Hong)  
HongR@sec.gov**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**-against-**

**EDWARD T. KELLY,**

**Defendant.**

**COMPLAINT**

**20 Civ. \_\_\_\_\_ ( )**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Edward T. Kelly (“Kelly” or “Defendant”), alleges as follows:

**SUMMARY OF ALLEGATIONS**

1. This case involves unlawful insider trading in the securities of Aceto Corporation (“Aceto”) by Kelly, a former Controller of Aceto.

2. In the first three months of 2018, Aceto’s sales and earnings were declining, placing Aceto, a company involved in the generic pharmaceutical business, in financial distress.

As a result, Aceto had begun the process of testing the value of its intangible assets for a possible

impairment charge—a process that led to Aceto writing down the value of those assets by more than \$235 million.

3. Around the same time, Kelly, who had served as Aceto’s Controller since 2001, retired from Aceto on March 7, 2018. After informally advising his successor (the “Successor Controller”) from March 8 until April 2, Kelly was formally retained by Aceto as a consultant on April 3, 2018 to assist the Successor Controller in closing Aceto’s books for the quarter ending March 31, 2018, and began receiving material, non-public information regarding Aceto’s quarterly results and its pending impairment charge.

4. While in possession of material, non-public information, Kelly sold all of the Aceto shares that he owned, and he exercised all of his in-the-money stock options and immediately sold the acquired shares. By knowingly or recklessly trading in violation of the duty of trust and confidence that he owed to Aceto and its shareholders, Kelly avoided losses on the stock he sold and unjustly profited on the options he exercised by more than \$85,000 in the aggregate.

### **VIOLATIONS**

5. By virtue of the foregoing conduct and as alleged further herein, Kelly has violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

6. Unless Kelly is restrained and enjoined, he will engage in the acts, practices, transactions, and courses of business set forth in this Complaint, or in acts, practices, transactions, and courses of business of similar type and object.

### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

7. The Commission brings this action pursuant to the authority conferred upon it by

Exchange Act Sections 21(d) and 21A(a) [15 U.S.C. §§ 78u(d) and 78u-1(a)].

8. The Commission seeks a final judgment: (a) permanently enjoining Kelly from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Kelly to pay civil money penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; (c) permanently prohibiting Kelly from serving as an officer or director of any company that has a class of securities registered under Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports under Exchange Act Section 15(d) [15 U.S.C. § 78o(d)], pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)]; and (d) ordering any other and further relief the Court may deem just and proper.

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa].

10. Kelly, directly and indirectly, has made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue lies in this District under Exchange Act Section 27 [15 U.S.C. § 78aa]. Kelly transacts business in the Eastern District of New York, and certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District. Kelly worked with and obtained material, non-public information via e-mail from, and telephone calls with, the Successor Controller working out of Aceto's headquarters in Port Washington, New York.

#### **DEFENDANT**

12. **Kelly**, age 63, is a resident of Lakewood Ranch, Florida. From 2001 until his

retirement on March 7, 2018, Kelly was the Controller of Aceto. From March 8, 2018 through April 2, 2018, Kelly informally advised the Successor Controller on various day-to-day issues that the Successor Controller encountered in his new role. On April 3, 2018, Kelly became a consultant to Aceto to assist the Successor Controller with the closing of Aceto's books for the quarter ending March 31, 2018.

### **OTHER RELEVANT ENTITY**

13. **Aceto** was a New York corporation headquartered in Port Washington, New York. At all relevant times, Aceto was in the business of marketing and selling generic pharmaceuticals, pharmaceutical ingredients, and chemicals. At all relevant times, Aceto's common stock was registered pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ Global Select Market (ticker: ACET). On February 19, 2019, Aceto filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey, which led to all of its operations being sold and the company being liquidated.

### **FACTS**

#### **A. Kelly Owed a Duty of Trust and Confidence to Aceto and its Shareholders**

14. Kelly owed a duty of trust and confidence to Aceto and its shareholders, and Aceto's policies expressly provided that Kelly's duty prohibited him from trading Aceto securities while he was in possession of material, non-public information. From his 18 years as Aceto's Controller, Kelly was well familiar with such duties and policies.

15. Aceto had both a Code of Business Conduct and Ethics (the "Code of Conduct") and a Corporate Trading Policy, which was incorporated by reference into the Code of Conduct. Both policies expressly applied to all directors, officers, and employees of Aceto, and the Corporate Trading Policy also expressly applied to agents of Aceto, including independent

contractors, consultants, accountants, and attorneys. Both policies prohibited all such individuals from trading in Aceto securities while in possession of material, non-public information, and both policies provided that the prohibition continued after separation from Aceto.

16. Aceto's Corporate Trading Policy provided a non-exclusive, illustrative list of types of information that Aceto viewed as reasonably likely to be material. It included, among other things, earnings or expectations for the quarter or the year; internal information about revenues, earnings or other aspects of financial performance which departs in any way from what the market would expect based upon prior disclosures; and significant write-downs in assets.

17. Aceto's Corporate Trading Policy also prohibited trading in Aceto securities during "Earnings Black-Out Periods." The Earnings Black-Out Period prohibition applied to all employees who were directly involved in the preparation of Aceto's consolidated financial statements or who had access to information from those financial statements while they were being prepared. They began on the 21<sup>st</sup> day before the end of a quarter and ended two trading days after earnings were released. An Earnings Black-Out Period was therefore in effect from March 10, 2018 until May 9, 2018 in connection with the closing of Aceto's third fiscal quarter ending March 31, 2018. During his 18 years as Aceto's Controller, Kelly was routinely subject to Earnings Black-Out Periods.

18. Aceto's Corporate Trading Policy also prohibited trading in Aceto securities during "Non-Ordinary Black-Out Periods." Non-Ordinary Black-Out Periods were imposed by Aceto's Corporate Secretary on individuals who became aware of events, developments, contingencies, or potential transaction that constituted material non-public information. Non-Ordinary Blackout Periods continued until the information giving rise to the Non-Ordinary Black-Out Period became public. Aceto's Corporate Trading Policy stated that the existence of a

Non-Ordinary Black-Out Period could itself constitute material non-public information. On the day he retired from Aceto, Kelly was subject to a Non-Ordinary Black-Out Period, which continued to be in effect at all relevant times.

19. As recently as in the year prior to his retirement, Kelly had executed a Code of Business Conduct and Ethics Acknowledgement of Receipt and Understanding Agreement to be Bound, dated March 6, 2017, in which he both acknowledged that he had received, read, and understood the Code of Conduct and agreed to be bound by the obligations set forth in the Code of Conduct, which incorporates the Corporate Trading Policy.

**B. Kelly Traded in Aceto Securities After Obtaining Material, Non-Public Information from Aceto**

20. Although Aceto's Corporate Trading Policy required Kelly to maintain the confidentiality of information that he learned in connection with his employment—whether as an employee or a consultant—and to refrain from trading on the basis of such non-public information, and although Kelly was fully informed of these obligations and limitations during his employment with Aceto, Kelly nevertheless traded securities issued by Aceto after obtaining material, non-public information from Aceto.

21. On February 2, 2018, prior to market-open, Aceto filed a Form 10-Q (the “February Form 10-Q”) and issued a press release concerning its fiscal second quarter, ending on December 31, 2017. Aceto reported a decline in profits and profit margins and projected that its generic pharmaceutical business would continue to face “generic industry headwinds.” Aceto projected that overall results for the second half of the fiscal year would be “only modestly better than the first half” and that it would have non-GAAP earnings of between \$1 and \$1.05 per share (the “February Guidance”).

22. After the February Guidance was released, Aceto experienced additional financial

difficulties. Its earnings declined in February and March 2018, and unpublished internal estimates projected that Aceto would fall materially short of the February Guidance.

23. By early March 2018, Aceto's results and projected earnings had declined to the point that Aceto began to test the intangible assets on its balance sheet to determine if the decline in earnings would require Aceto to take an impairment charge, which would write down part of their value. During March 2018, Aceto's testing revealed that, at the low end, Aceto would be required to write down the value of its intangible assets by at least \$135 million and that, at the high end, the approximately \$235 million of goodwill on Aceto's balance sheet might be fully impaired—that is, its value would be reduced to zero. At either the high or low end of the impairment testing results, the write down would comprise a significant portion (from approximately 13.5% to 23.5%) of Aceto's total assets, which were approximately \$1.01 billion as of December 31, 2017.

24. On March 10, 2019, three days after Kelly retired, Aceto's Earnings Black-Out Period began for its third fiscal quarter. During this period, the Successor Controller began initial work on closing Aceto's books for its third fiscal quarter, and Kelly informally advised the Successor Controller on various day-to-day issues that the Successor Controller encountered.

25. On March 31, 2018, Aceto's third fiscal quarter concluded. The Successor Controller then began work on the preparation of Aceto's consolidated financial statements for its third fiscal quarter, which were ultimately released on May 7, 2018 in a Form 10-Q.

26. On April 3, 2018, Kelly was informed by the Successor Controller that Aceto had approved Kelly to work as a consultant, assisting the Successor Controller in the process of closing its books for the quarter and preparing its consolidated financial statements. In the weeks that followed, Kelly and the Successor Controller had multiple phone calls, several of which

lasted between approximately a half hour and an hour. On each of these calls, Kelly and the Successor Controller discussed Kelly's work as a consultant and the quarterly closing process. In addition, the Successor Controller sent Kelly confidential financial information for Kelly to use in his role as a consultant.

27. During the period between his March 7, 2018 retirement from Aceto and April 3, 2018, when he began working as a consultant for Aceto, Kelly did not sell any Aceto shares.

28. However, after Kelly began working as a consultant for Aceto and received material, non-public financial information concerning its results for its third fiscal quarter, Kelly proceeded to sell all of his Aceto shares, including those acquired by exercising his in-the-money stock options.

29. The chart below contains the dates and times of some examples of the calls and emails between the Successor Controller and Kelly, as well as each of Kelly's trades in Aceto securities, while Kelly was acting as a consultant to Aceto. Each of the phone calls and emails concerned the closing of Aceto's books, including the preparation of its consolidated financial statements for the fiscal third quarter, and it was through these phone calls and emails, among others, that Kelly received material, non-public information about Aceto's poor sales and earnings results and the impairment charge. Indeed, as Kelly obtained more material, non-public information about Aceto's financial results, Kelly accelerated his sales.

<b><u>Date (2018)</u></b>	<b><u>Event</u></b>
April 5 (Thursday)	5:08 p.m.: Kelly and the Successor Controller talked by telephone for approximately 28 minutes.
April 6 (Friday)	2:47 p.m. – 4:04 p.m.: Kelly placed several orders to sell several thousand Aceto shares, with limits ranging from \$7.39 to \$7.62. None of the orders was filled.
April 9 (Monday)	2:42 p.m.: The Successor Controller received a quarterly report showing an approximate 12.4% year-over-year drop in sales and 23.3% year-over-year



	<p>drop in gross profits for certain divisions that accounted for approximately 40% of all domestic Aceto sales and gross profits in the third quarter of the prior year.</p> <p>3:50 p.m.: The Successor Controller received a quarterly report showing that gross profits in several of the domestic divisions were between 7.3% and 24.5% less than Aceto had budgeted for the quarter.</p> <p>5:17 p.m.: Kelly and the Successor Controller talked by telephone for approximately 19 minutes.</p> <p>8:30 p.m.: The Successor Controller sent Kelly trial balances and bank statements for one Aceto subsidiary that would be consolidated into Aceto's financial statements for the quarter.</p>
April 11 (Wednesday)	<p>11:48 a.m. – 11:53 a.m.: Kelly entered sell orders with limits ranging from \$7.32 to \$7.67. One order was filled, with Kelly selling 1,000 shares at \$7.32.</p> <p>3:16 p.m.: Kelly and the Successor Controller talked by telephone for approximately 54 minutes.</p>
April 12 (Thursday)	<p>11:38 p.m.: The Successor Controller sent Kelly trial balances for additional Aceto subsidiaries and the Aceto parent company, Aceto Corporation. These trial balances showed assets, liabilities, revenue, and expenses for the quarter. The parent company, before consolidating its subsidiaries, had a net loss for the quarter of more than \$3.8 million.</p>
April 13 (Friday)	<p>10:58 a.m.: Kelly and the Successor Controller talked by telephone for approximately 32 minutes.</p>
April 16 (Monday)	<p>10:24 a.m.: The Successor Controller received trial balances for three Aceto subsidiaries reflecting impairment charges of more than \$213 million dollars.</p> <p>11:32 a.m. – 12:03 p.m.: Kelly entered sell orders with limits ranging from \$7.11 to \$7.67, resulting in the sale of 5,000 Aceto shares.</p> <p>12:05 p.m.: Kelly and the Successor Controller talked by telephone for approximately 35 minutes.</p> <p>12:20 p.m. – 12:30 p.m.: While still on the phone with the Successor Controller, Kelly entered additional sell orders, some of which were market orders and some of which had limits ranging from \$7.09 to \$7.13, resulting in the sale of all of his remaining 13,677 Aceto shares.</p> <p>2:27 p.m.: The Successor Controller sent Kelly an email attaching an outside consultant's draft analysis calculating an impairment in excess of</p>

	<p>\$211 million and trial balances for the affected subsidiaries that reflected this impairment charge.</p> <p>3:18 p.m.: Kelly and the Successor Controller talked by telephone for approximately 11 minutes.</p> <p>5:28 p.m.: Kelly and the Successor Controller talked by telephone for approximately 10 minutes.</p> <p>5:34 p.m.: The Successor Controller sent Kelly trial balances for three subsidiaries reflecting a total goodwill impairment of more than \$234 million.</p>
April 17 (Tuesday)	<p>12:34 p.m.: The Successor Controller sent Kelly drafts of income statements and balance sheets for the subsidiaries affected by the impairment charge.</p> <p>1:18 p.m.: Kelly and the Successor Controller talked by telephone for approximately 11 minutes.</p> <p>3:18 p.m.: The Successor Controller sent Kelly draft consolidated financial statements, reflecting the impairment charge.</p> <p>9:31 p.m.: Kelly sent the Successor Controller an email noting “big swings in equity line items.”</p>
April 18 (Wednesday)	<p>Kelly exercised all of his in-the-money Aceto stock options at \$6.18 and sold the shares, generating net proceeds of \$2,263.12.</p>

30. Information regarding Aceto’s financial condition that was generated for and used in its quarterly closing process and the preparation of Aceto’s consolidated balance sheets was material and non-public. This information showed that Aceto’s sales and earnings had declined materially from the prior year and from the February Guidance.

31. All aspects of the impairment charge, including its likely existence and size, also were material and non-public. In the February Form 10-Q, Aceto reported total assets of approximately \$1.01 billion, so the impairment charges reflected in the documents sent on April 16, 2018 represented more than 20% of the assets on Aceto’s balance sheet.

32. Kelly traded in Aceto securities in breach of his obligations under Aceto’s

policies and in breach of his duty of trust and confidence to Aceto and its shareholders. Kelly knew or recklessly disregarded that he breached these duties by trading while in possession of material, non-public information regarding Aceto.

33. Kelly traded in Aceto securities on the basis of the information that he obtained while working as a consultant for Aceto while knowing, or while reckless in not knowing, that the information he received from the Successor Controller was material and nonpublic.

34. Kelly's trading on the basis of material, non-public information entrusted to him by Aceto was deceptive and fraudulent.

### **C. Aceto's Announcement**

35. After the markets closed on April 18, 2018, Aceto filed a Form 8-K and issued a press release announcing that (a) it anticipated recording non-cash intangible asset impairment charges, including goodwill, in the range of \$230 million to \$260 million to be recorded in the fiscal third quarter; (b) it was negotiating a waiver of the recently-amended financial covenants with its secured lender for the fiscal third quarter; (c) it anticipated a significant reduction of its dividend to provide appropriate assurances to its lenders and to fortify the balance sheet; (d) its February 1, 2018 financial guidance should no longer be relied upon, and it was suspending providing further financial guidance; (e) its board of directors had initiated a process to identify and evaluate a range of strategic alternatives; and (f) the Chief Financial Officer had resigned, two months after being hired.

36. On April 18, 2018, before Aceto issued its Form 8-K and press release, Aceto's stock closed at \$7.40. On April 19, 2018, Aceto's stock closed at \$2.66, a decline of approximately 64 percent. Aceto's stock price was still below \$3 when Aceto released its results for its fiscal third quarter on May 7, 2018, when it reported a loss of more than \$202 million for

the nine months ended March 31, 2018. Following its April 18 announcement, Aceto's stock price never again reached the exercise price for the options that Kelly exercised and sold that day just prior to that announcement.

37. By selling his Aceto shares on April 11 and April 16, and by exercising his in-the-money Aceto stock options and selling the shares on April 18 before Aceto's announcement, in violation of the duty of trust and confidence that he owed to Aceto and its shareholders, Kelly avoided losses and made an unjust profit of more than \$85,000 in the aggregate.

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

38. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 37.

39. Defendant, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly has (i) employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

40. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, has violated and, unless enjoined, will again violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

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

**I.**

Permanently enjoining Kelly and his agents, servants, employees and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly, 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];

**II.**

Ordering Kelly to pay civil monetary penalties under Exchange Act Section 21A [15 U.S.C. § 78u-1];

**III.**

Permanently prohibiting Kelly from serving as an officer or director of any company that has a class of securities registered under Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports under Exchange Act Section 15(d) [15 U.S.C. § 78o(d)], pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)]; and

**IV.**

Granting any other and further relief this Court may deem just and proper.

Dated: New York, New York  
September 23, 2020

/s/ Richard R. Best  
RICHARD R. BEST  
REGIONAL DIRECTOR  
Sanjay Wadhwa  
Wendy B. Tepperman  
Richard Hong  
Eric C. Kirsch  
Michael C. Ellis  
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