

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96759 / January 27, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21286

In the Matter of

DONNA MATUIZEK,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Donna Matuizek (“Matuizek” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

This matter involves insider trading by Matuizek in the securities of Pandion Therapeutics, Inc. (“Pandion”) in advance of the February 25, 2021 announcement that Merck & Co., Inc. (“Merck”) had agreed to acquire all outstanding Pandion stock in a tender offer for \$60 per share (the “Announcement”). Matuizek obtained material nonpublic information (“MNPI”) about a potential transaction between Merck and Pandion through her role as Vice President of Quality for a key Pandion supplier (“Supplier”) that was the subject of a due diligence audit by Merck relating to the acquisition. On February 16, 2021, in violation of her duties to Supplier and to Pandion, Matuizek purchased Pandion stock while aware and on the basis of that MNPI. When Pandion’s stock price rose by approximately 133% following the Announcement, Matuizek obtained ill-gotten gains of \$27,800.

Respondent

1. **Matuizek**, age 65, resides in Burien, Washington. During the relevant period, Matuizek was employed at Supplier as Vice President of Quality.

Other Relevant Entities

2. **Pandion** was a Delaware corporation headquartered in Watertown, Massachusetts. Pandion was a clinical-stage biopharmaceutical company that developed therapeutics for patients with autoimmune diseases. During the relevant period, Pandion’s common stock was listed on the NASDAQ Global Select Market under the symbol “PAND.”

3. **Merck** is a New Jersey corporation headquartered in Rahway, New Jersey. Merck is a global health care company with products that include prescription medicines, vaccines, biologic therapies, and animal health products. Merck’s common stock is listed on the NYSE and trades under the symbol “MRK.”

4. **Supplier** is a Delaware corporation headquartered in Seattle, Washington, and is a wholly-owned subsidiary of a publicly-listed biotechnology company based in Europe. Supplier is a drug discovery and development company focused on technologies that accelerate the design, development and manufacture of clinical-stage biotherapeutics.

Background

5. Matuizek was employed by Supplier from June 2016 through June 2022. From December 2018 through June 2022, she held the position of Vice President of Quality and was responsible for managing Supplier’s quality control and quality assurance functions and for ensuring compliance with quality- and safety-related standards and regulations. During that time, Matuizek was subject to Supplier’s policies and procedures concerning insider trading and treatment of MNPI obtained in connection with her employment. Under those policies, Matuizek owed Supplier a duty not to “use, disclose or share insider information that is not in the public domain for personal gain, for the benefit of third parties or in any other manner that damages the interests of [Supplier].” She also owed Supplier a duty “to hold all [] confidential or proprietary

information [received from third parties with which Supplier does business] in the strictest confidence and not [] disclose it [or] use it except as necessary in carrying out [her] work for [Supplier] consistent with [Supplier's] agreement with such third party.”

6. Beginning in 2018, Supplier contracted with Pandion to develop and manufacture Pandion's lead drug, PT-101, a clinical-stage compound for the treatment of autoimmune disease. Pursuant to the written contract between Supplier and Pandion, Supplier and its employees, including Matuizek, were obligated to “maintain and follow reasonable procedures to prevent unauthorized disclosure or use” of information they learned about Pandion, and to use such information “solely for the purposes of performing [Supplier's] obligations or exercising its rights under the [contract].”

7. In August 2020, representatives of Merck and Pandion began meeting to discuss updates to Pandion's drug developments and to facilitate due diligence by Merck of Pandion pursuant to a confidentiality agreement between the parties. Those discussions culminated in an October 2020 proposal by Merck for a possible partnership between the two companies. Although Pandion rejected the October 2020 proposal, Merck continued its due diligence, and by February 5, 2021, Merck had retained a law firm and an investment bank to advise it on a potential acquisition of Pandion. On February 7, 2021, Merck submitted a non-binding offer to acquire Pandion, and on February 9, 2021, Merck and Pandion agreed to move forward with an acquisition at a price of \$60 per share, pending completion of due diligence. That same day, Merck provided Pandion with an initial draft of a merger agreement pursuant to which it would acquire all outstanding Pandion stock in a tender offer for \$60 per share. On February 19, 2021, Merck completed its due diligence of Pandion, and Pandion's board of directors voted to accept Merck's acquisition offer. The acquisition was announced publicly on February 25, 2021.

8. The late-stage due diligence that Merck performed in connection with the Pandion acquisition included on-site audits of key Pandion suppliers, including Supplier. On February 8, 2021, Pandion executives alerted several Supplier employees, including Matuizek, by email and telephone that Merck would be performing a due diligence audit of Supplier focused on quality control and regulatory compliance with respect to the manufacture of PT-101. In her role as VP of Quality for Supplier, Matuizek was responsible for coordinating the due diligence audit from initial planning through completion, including responding substantively to Merck's information requests and providing Merck access to key documents and systems relating to the manufacture of PT-101.

9. Between February 8 and February 16, 2021, Matuizek participated in or was copied on numerous communications concerning the audit. As a result, by no later than February 10, 2021, Matuizek knew, among other things, that: (i) Merck was performing a third-party due diligence audit focused on Pandion's lead drug, PT-101; (ii) Merck and Pandion had entered into a formal confidential disclosure agreement encompassing information that Pandion shared about PT-101; and (iii) Merck's due diligence audit relating to Pandion was highly confidential and proceeding on an unusually expedited timeframe. Indeed, on February 8, 2021, Matuizek received an email that described the due diligence audit as “highly confidential,” and directed that Supplier employees not discuss it with their regular contacts at Pandion, limiting all communications to senior Pandion leadership.

10. On February 16, 2021, after more than a week of coordinating with Pandion and Merck employees to facilitate Merck's due diligence audit of Supplier, Matuizek purchased 700 shares of Pandion stock. Matuizek made that purchase while aware and on the basis of the MNPI concerning the due diligence audit that she obtained through her work at Supplier, in breach of her duty of trust and confidence to Supplier and her duty of confidentiality to Pandion.

11. By the time Matuizek purchased Pandion shares on February 16, 2021, Merck had taken substantial steps to commence a tender offer for Pandion as described above.

12. Following the February 25, 2021 Announcement, the price of Pandion shares increased by approximately 133%, and, as a result, Matuizek obtained ill-gotten gains of \$27,800.

13. Matuizek knew, consciously avoided knowing, or was reckless in not knowing that the information she possessed as of February 16, 2021 regarding the due diligence audit was material and nonpublic and was indicative of a potential transaction between Merck and Pandion. Matuizek also knew, consciously avoided knowing, or was reckless in not knowing that by trading on that information, she breached her duty of trust and confidence to Supplier and her duty of confidentiality to Pandion.

14. Matuizek knew or had reason to know that the MNPI she possessed when she purchased Pandion shares on February 16, 2021 had been acquired directly or indirectly from officers, employees or agents of the acquiring company (Merck) and/or the target company (Pandion).

15. As a result of the conduct described above, Matuizek violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

16. As a result of the conduct described above, Matuizek violated Section 14(e) of the Exchange Act and Rule 14e-3(a) thereunder, which prohibit fraudulent conduct in connection with tender offers.

Disgorgement

17. The disgorgement and prejudgment interest ordered in paragraph IV.B. is consistent with equitable principles, does not exceed Respondent's net profits from her violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Matuizek's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Matuizek cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder.

B. Matuizek shall, within 14 days of the entry of this Order, pay disgorgement of \$27,800, prejudgment interest of \$1,717.96, and a civil money penalty in the amount of \$27,800 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Donna Matuizek as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph G. Sansone, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor

Action, she shall not argue that she is entitled to, nor shall she benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary