

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99666 / March 4, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21886

In the Matter of

Hemant Agrawal,

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 Hemant Agrawal (“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 him 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 finds that:

Summary

This matter concerns insider trading by Hemant Agrawal in the securities of Oyster Point Pharma Inc. (“OYST”) based on information he obtained from his employment at the pharmaceutical company Viatrix, Inc. (“VTRS”) that VTRS was pursuing a transaction with

OYST. That pursuit culminated in the November 7, 2022 announcement of an agreement that VTRS would acquire OYST for \$11 per share, plus other contingent consideration. That day, OYST's stock price rose to a high of \$11.83 per share and closed at \$11.57 per share, a nearly 39% increase from the prior day's closing price of \$8.35. Because of Respondent's position at VTRS, he was aware of VTRS's interest in OYST as early as July 2022. Starting in August of that year and continuing into November, Respondent purchased 7,113 shares of OYST stock. Respondent sold the stock on November 7, 2022, after the announcement of the acquisition, for \$29,799 in illicit gains.

Respondent

1. Hemant Agrawal, age 52, is a resident of Pittsburgh, Pennsylvania. During the relevant period, Respondent was employed as the Vice President and Head of Data Policy Research, Data Analytics, and Strategic Initiatives at VTRS. He is not registered with the Commission in any capacity.

Other Relevant Entities

2. OYST was a Delaware corporation headquartered in Princeton, New Jersey. At all times relevant to this proceeding, OYST's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ.

3. VTRS is a Delaware corporation headquartered in Canonsburg, Pennsylvania. VTRS's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. VTRS's common stock trades on the NASDAQ.

Facts

4. Respondent began working at VTRS, then known as Mylan N.V., in January 2012. He started as a Senior Director working in Global Regulatory Affairs and rose to become the Head of Policy Data Research, Data Analytics, and Strategic Initiatives, a role he held starting in March 2019.

5. At all relevant times, VTRS's Global Insider Trading Policy prohibited employees from trading based on "nonpublic [m]aterial [i]nformation about any other company" that the employee learned "in the course of working for" VTRS. VTRS's Code of Business Conduct and Ethics prohibited the use of VTRS's proprietary information for personal benefit.

6. At all relevant times, Respondent was aware that VTRS prohibited him from trading based on information that he obtained in the course of his employment.

7. In early June 2022, VTRS was exploring licensing certain of OYST's products. Later that month, the companies began discussing a potential acquisition of OYST by VTRS. Talks between the companies continued through the summer, including a July 12, 2022 meeting between OYST management and VTRS management that took place at VTRS's offices in New York.

8. Negotiations continued through the early fall of 2022 and culminated in the November 7, 2022 announcement that VTRS had agreed to acquire OYST for \$11 per share in cash, with certain further consideration if sales milestones were met for one of OYST's products.

9. In his position at VTRS, Respondent learned information about VTRS's interest in OYST. Among other things, in July 2022, Respondent received a document, marked as confidential, containing information about VTRS's efforts to license certain of OYST's products. Shortly thereafter, on July 12, 2022, Respondent attended a portion of a meeting of VTRS and OYST executives relating to a potential transaction between the companies.

10. On August 16, 2022, Respondent purchased 2,000 shares of OYST stock for \$7.05 per share in a brokerage account he held jointly with his wife. Then, on October 28, 2022, in an account in his wife's name but which he controlled, Respondent purchased 650 shares of OYST stock for \$7.89 per share.

11. On Saturday, October 29, 2022, Respondent received and reviewed an email indicating that the VTRS team responsible for VTRS's strategic transactions would provide an update on negotiations with OYST at a meeting to be held on Tuesday, November 1, 2022.

12. On Monday, October 31, 2022, Respondent purchased 1,005 shares of OYST stock for \$7.96 per share in his wife's account that he controlled. He also purchased an additional 740 shares of OYST stock for \$7.92 per share in his own account. Finally, on the morning of November 1, 2022, Respondent purchased 435 shares of OYST stock for \$8.11 per share in his own account.

13. On November 7, 2022, following the announcement of the deal, Respondent sold all of the OYST holdings in his and his wife's accounts for \$11.60 per share, obtaining a total of \$29,799 in illicit profits.

14. Respondent knew or was reckless in not knowing that the information he possessed concerning a potential transaction between VTRS and OYST was material and nonpublic.

15. By purchasing OYST securities on the basis of material nonpublic information that he obtained from his work at VTRS, Respondent breached the duties he owed to VTRS. Respondent also knew or was reckless in not knowing that trading on that information was a breach of his duties to VTRS.

16. As a result of the conduct described above, Respondent 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.

Disgorgement

17. The disgorgement and prejudgment interest ordered in Section IV is consistent with equitable principles, does not exceed Respondent's net profits from his 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 Section IV 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's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent be, and hereby is, barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act for a period of five (5) years from the entry of this Order.

C. Respondents shall, within 10 days of the entry of this Order, pay disgorgement of \$29,799, prejudgment interest of \$1,569, and a civil money penalty in the amount of \$29,799 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 is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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 Hemant Agrawal 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.

D. 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, he shall not argue that he is entitled to, nor shall he 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 he 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