U.S. Department of Justice

United States Attorney
Southern District of New York

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February 26, 2015

By Electronic Mail
Honorable Brenda P. Murray
Chief Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

Re: *In the Matter of STEVEN A. COHEN*, Administrative Proceeding File No. 3-15382

Dear Judge Murray:

Pursuant to the Court's Orders dated August 8, 2013, March 4, 2014, May 29, 2014, September 2, 2014, and November 28, 2014, the United States Attorney's Office for the Southern District of New York (the "U.S. Attorney") writes to update the Court with respect to its continued request to stay the proceedings in the above-captioned matter based on ongoing criminal proceedings. The U.S. Attorney respectfully submits that the stay should continue in effect because certain of the criminal proceedings that originally warranted a stay of the administrative action remain ongoing.

In its original application for a stay of administrative proceedings, the U.S. Attorney identified three pending criminal prosecutions with facts that substantially overlapped with the allegations of the United States Securities and Exchange Commission in the Order Instituting Proceedings ("OIP"). The OIP alleges that respondent Steven A. Cohen, the founder of a group of affiliated hedge funds (collectively, the "SAC Hedge Fund" or "SAC"), failed to reasonably supervise two portfolio managers, Mathew Martoma and Michael Steinberg, who were alleged to have engaged in insider trading in violation of Title 15, United States Code, Section 78j(b) and Title 17, Code of Federal Regulations, Section 240.10b-5. At the time of the OIP, Martoma and Steinberg had been criminally charged with engaging in the insider trading activity upon which the failure to supervise allegations are premised. *See United States v. Martoma*, 12 Cr. 973 (PGG) and *United States v. Steinberg*, 12 Cr. 121 (RJS). Additionally, shortly after the OIP was filed, the U.S. Attorney brought criminal charges against the four corporate entities owned by Mr. Cohen that were responsible for managing the assets of the SAC Hedge Fund (collectively, the "SAC Hedge Fund Entities"). *See United States v. S.A.C. Capital Advisors, L.P., et al.*, 13 Cr. 541 (LTS). The criminal charges against the SAC Hedge Fund Entities were based in part on the alleged insider trading of Martoma and Steinberg, among several other employees.

On August 8, 2013, this Court issued an order granting a complete stay of proceedings "pending resolution of *Martoma*, *Steinberg*, and *S.A.C. Capital Advisors, L.P.*" (August 8, 2013

Order at 3). On November 29, 2013, March 4, 2014, May 29, 2014, September 2, 2014 and again on November 28, 2014, following updates as to the status of the criminal prosecutions, the Court continued the stay based on the information provided by the U.S. Attorney. The Government provides this additional update on the three matters referenced in the Court's prior order.

The case against *S.A.C. Capital Advisors, L.P., et al.* has been fully resolved. As the Court is aware, the four SAC Hedge Fund Entities pled guilty to insider trading charges on November 8, 2013. Subsequently, on April 10, 2014, the District Court accepted those guilty pleas and sentenced the SAC Hedge Fund Entities to, among other things, a five-year term of probation and a $900 million fine (in addition to the $284 million penalty previously imposed in connection with the civil forfeiture action). No appeal was taken.

Martoma was sentenced on September 8, 2014 to nine years' imprisonment. Martoma subsequently filed a notice of appeal, and sought bail pending appeal before the United States Court of Appeals for the Second Circuit. On November 12, 2014, the Court of Appeals denied Martoma's application for bail pending appeal, concluding that Martoma had "failed to show that the appeal raises a substantial question of law or fact." Martoma subsequently surrendered as ordered to the Bureau of Prisons on November 20, 2014. Martoma's brief was filed on February 2, 2015. The brief argues, among other things, that the Government failed to prove that the paid physician-consultant who provided Martoma with advance news of a drug trial's results did so in return for a personal benefit under the standard recently articulated by the Second Circuit in *United States v. Todd Newman & Anthony Chiasson*, 2014 WL 6911278, ___ F.3d ___ (2d Cir. 2014) (the "*Newman/Chiasson* Appeal"). The Government's brief is due on May 2, 2015.

Steinberg, who was convicted of all counts on December 18, 2013, and thereafter sentenced on May 16, 2014 to a 42-month term of imprisonment, filed a notice of appeal to the United States Court of Appeals for the Second Circuit. Proceedings in the *Steinberg* case had been stayed by the Second Circuit at Steinberg's request, pending the outcome of the *Newman/Chiasson* Appeal, as Steinberg intends to raise one of the same legal issues presented in the *Newman/Chiasson* Appeal, namely, whether the offense of insider trading requires a tippee to know that the insider who supplied material, non-public information did so in exchange for a benefit. Steinberg's appeal remains stayed in the Second Circuit.

On December 10, 2014, the Second Circuit issued an opinion in the *Newman/Chiasson* Appeal (the "Opinion"), holding both that the Government was required to prove that a tippee knew that the insider had provided the material non-public information in return for a benefit and that the evidence that the insiders in the *Newman/Chiasson* Appeal received any such benefit was insufficient. In reaching this conclusion, the Second Circuit held that a jury was not permitted to infer that a benefit was received "by the mere fact of a friendship, particularly of a casual or social nature" without "proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature." Finding that a benefit meeting this newly-announced standard had not been proven, the Second Circuit ordered the dismissal of the charges with prejudice.

On January 23, 2015, the U.S. Attorney filed a Petition for Rehearing and Rehearing En Banc with the Second Circuit (the "Petition"). The U.S. Attorney argued in the Petition that the Opinion erroneously redefined the "personal benefit" requirement of insider trading liability in a manner inconsistent the Supreme Court's opinion in *Dirks v. SEC*, 463 U.S. 646 (1983) and other precedent. With respect to the Opinion's novel requirement that a culpable tippee must *know* that the insider provided the information in return for a benefit, the U.S. Attorney argued that there was sufficient evidence to satisfy this requirement and that the extraordinary dismissal of the case denied the Government the opportunity to retry the case to a jury. Newman and Chiasson have opposed the Petition and the matter is pending before the Second Circuit.

In view of these circumstances, the U.S. Attorney respectfully submits that the continued stay of the above-captioned administrative proceeding remains necessary at least until the Second Circuit rules on the Petition.

Pursuant to the Court's August 8, 2013 Order, the U.S. Attorney will provide a further update as to whether a stay remains warranted on or before May 27, 2015, or earlier should the Second Circuit rule on the Petition before that time.

Respectfully submitted,

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