

**JUDGE SWAIN**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

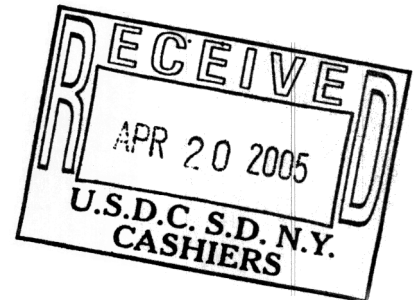
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NABIL HANNA,

Defendant.  
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**COMPLAINT**

**PRELIMINARY STATEMENT**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Dr. Nabil Hanna ("Hanna"), alleges as follows:

1. This matter involves insider trading by Hanna, the former Executive Vice President of Research and Chief Scientific Officer of Biogen Idec, Inc. ("Biogen"), in the common stock of Regeneron Pharmaceuticals, Inc. ("Regeneron") prior to Regeneron's public announcement on September 8, 2003 that it had entered into an agreement with Aventis, SA to develop and market a potential cancer treatment known as the VEGF-Trap (the "September 8<sup>th</sup> Announcement").

2. Specifically, in early July 2003, Regeneron's representatives contacted Biogen to discuss a potential joint venture to develop and market Regeneron's VEGF-Trap. On July 24, 2003, Biogen signed a confidentiality agreement with Regeneron, which covered the exchange of scientific, as well as business, information concerning the VEGF-Trap. Shortly thereafter, Biogen representatives, including Hanna, and Regeneron representatives began discussing the possible joint venture. During the course of these confidential discussions, which continued through early September, Hanna learned that the VEGF-Trap was scientifically and commercially viable; that Regeneron's preclinical stage testing of the VEGF-Trap produced positive results; that the VEGF-Trap had blockbuster sales potential; and the financial terms Regeneron required for the joint venture.

3. On August 18 and 19, 2003, while in possession of this material, nonpublic information, Hanna purchased 17,500 shares of Regeneron stock at prices ranging from \$13.95 to \$14.15 per share. Hanna breached his duty to his employer, Biogen, and the source of the confidential information, Regeneron, when he used the material, nonpublic information about the VEGF-Trap for personal gain. On September 9, 2003, one day after the September 8<sup>th</sup> Announcement, Hanna sold all 17,500 shares of Regeneron stock at \$21.15 per share, realizing a profit of \$124,000.

4. By virtue of his conduct, Hanna 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]

## **JURISDICTION AND VENUE**

5. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d)] to enjoin Hanna from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, for disgorgement of his gains and prejudgment interest thereon, and for civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. In addition, the Commission seeks an order barring Hanna 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 [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. The Commission also seeks such other relief as the Court may deem appropriate.

6. This Court has jurisdiction of this action pursuant to Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa].

7. In connection with the transactions, acts, practices, and courses of business described in this complaint, Hanna, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange. Certain of the transactions, acts, practices, and courses of business alleged herein occurred within this District, and venue is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. For example, Hanna learned of material, nonpublic information concerning the VEGF-Trap at a July 25, 2003 meeting at Regeneron's offices in Tarrytown, New York.

## RELEVANT INDIVIDUALS AND ENTITIES

8. **Hanna**, age 61, is a resident of Rancho Santa Fe, California. Hanna has a bachelor's degree in biology and a doctorate in immunology. Prior to joining Biogen in 1990, Hanna had worked in the cancer research field for approximately twenty years, including three years at the National Cancer Institute. Upon joining Biogen, Hanna was the director of pre-clinical research, and he later was promoted to Senior Vice-President of Clinical Research and Development. From May 1998 until May 2004, Hanna was Biogen's Executive Vice-President of Research and Chief Scientific Officer. Following an internal investigation by Biogen into Hanna's purchase of Regeneron stock, Hanna resigned from Biogen on May 12, 2004.

9. **Regeneron** is a Delaware corporation with its principal place of business in Tarrytown, New York. Regeneron's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and its common stock trades on the NASDAQ National Market.

10. **Biogen** is a Delaware corporation with its principal place of business in Cambridge, Massachusetts. Biogen is a biotechnology company formed in November 2003 by the merger of Biogen, Inc. and Idec Pharmaceuticals, Corp.

## FACTS

### **A. Background**

11. Beginning in June 2003, Regeneron engaged in separate, confidential discussions with representatives of four pharmaceutical companies, including Aventis, SA, concerning a

potential collaboration to develop and market Regeneron's potential cancer treatment known as the VEGF-Trap.

12. In early July 2003, Regeneron's CEO telephoned Biogen's CEO and invited Biogen to join the ongoing negotiations.

13. At the time of these initial discussions, Hanna's responsibilities included both evaluating the pre-clinical development of new compounds and assessing the viability of the science underlying any proposed licensing opportunity. Hanna was also a member of Biogen's Executive Committee, and attended meetings of the Alliance Review Committee, which evaluated potential licensing opportunities.

14. As a senior Biogen employee, Hanna was aware of, and acknowledged, his confidential relationship with Biogen when he signed an acknowledgement of the company's Proprietary Information and Inventions Agreement (the "Proprietary Information Agreement") on January 4, 1990. The Proprietary Information Agreement outlined policies concerning confidential information related to the company's drug research and development, including trade secrets, marketing plans, and business strategies. The Proprietary Information Agreement prohibited Hanna from using or disclosing such confidential information without the written consent of the company.

15. Hanna signed the Proprietary Information Agreement when he worked for Idec Pharmaceuticals Corp., prior to its merger with Biogen. The agreement explicitly provides that it is binding upon Hanna and "shall inure to the benefit of the Company, its successors and assigns."

**B. Biogen's Negotiations with Regeneron**

16. On approximately July 10, 2003, Biogen's CEO informed several senior officers of Biogen, including Hanna, of the proposed VEGF-Trap opportunity.

17. On July 24, 2003, Biogen and Regeneron signed a Confidential Disclosure Agreement ("CDA") that prohibited Biogen, or its employees, from using the information Regeneron disclosed relating to the VEGF-Trap for any purpose or disclosing that information to certain third parties without Regeneron's permission. Because the merger between Biogen and Idec had not closed as of July 24, 2003, Regeneron executed separate CDAs with each company.

18. Hanna previously had been involved in the review of potential business development opportunities, and was aware generally of the use of CDAs prior to any exchange of confidential information

19. The head of Biogen's business development group informed Hanna prior to a July 25, 2003 due diligence meeting that Regeneron and Biogen executed a CDA. Hanna understood that the CDA covered the scientific information disclosed to Biogen, as well as the financial information relating to Regeneron's proposal

**1. Hanna Learns of the Scientific Viability of the VEGF-Trap During the July 25, 2003 Due Diligence Meeting**

20. Hanna became aware of the scientific viability of the VEGF-Trap in a July 25, 2003 due diligence meeting between Regeneron and Biogen. During this meeting, which took place at Regeneron's offices in Tarrytown, New York, Regeneron provided confidential scientific information concerning the VEGF-Trap. Regeneron's presentation lasted approximately three

hours and included descriptions of (1) the scientific applications of the VEGF-Trap, (2) the results of Regeneron's preclinical tests, (3) the process of developing and manufacturing the VEGF-Trap, and (4) Regeneron's intended clinical stage development. At the conclusion of Regeneron's scientific presentation, Regeneron's business development head reiterated the financial terms that Regeneron insisted any potential partner meet before negotiations continued further: an upfront payment of \$100 million in cash from potential partners, a 50-50 profit split, and that any potential partner bear all of the development and manufacturing costs.

**2. Biogen's First Proposal for the VEGF-Trap**

21 Hanna became aware of the commercial viability of the VEGF-Trap upon returning from the July 25, 2003 due diligence meeting.

22. As Biogen began preparing a proposal to Regeneron, Hanna met on August 1, 2003 with senior officers of Biogen's business development group to review the estimated development costs and profits of the VEGF-Trap. The head of Biogen's business development group considered the VEGF-Trap to have "blockbuster sales" potential (i.e., over one billion dollars in sales) and valued the potential joint venture accordingly.

23 At the August 1, 2003 meeting, Hanna first presented his conclusion that the VEGF-Trap technology was viable.

24. Biogen prepared its first proposal for the VEGF-Trap with reference to the guidelines Regeneron had provided.

25. On or about August 5, 2003, Hanna attended another meeting during which Biogen's head of business development presented a summary of Regeneron's terms side-by-side

with Biogen's draft proposal. Biogen's draft proposal included a mixture of cash and equity for the upfront payment, an escalation in profit sharing favoring Biogen, and a 20% return on manufacturing costs.

26. Biogen ultimately incorporated the draft terms into a proposal it sent to Regeneron on August 8, 2003. Hanna received a copy of the term sheet for the proposal by e-mail.

27. Regeneron rejected the first Biogen proposal and reiterated several threshold terms that Regeneron required in any proposed collaboration prior to continuing negotiations further.

**3. Hanna Was Aware That Biogen Continued to Negotiate with Regeneron for the VEGF-Trap**

28. During the week leading up to Friday, August 15, 2003, Biogen's business development team continued to meet internally to refine Biogen's proposal for the VEGF-Trap along the terms Regeneron specified.

29. Although Hanna did not participate in the meetings leading up to the final review of Biogen's second proposal, Hanna was aware of the status and substance of Biogen's continued negotiations.

30. As Biogen's senior technical representative to Biogen's Board of Directors, Hanna was responsible for explaining the VEGF-Trap research and the scientific viability.

31. On August 15, 2003, Biogen's head of business development met with Hanna to coordinate and rehearse a presentation to Biogen's Board of Directors scheduled for August 21, 2003. During the rehearsal session, the head of Biogen's business development group outlined



the terms of Biogen's second proposal. Hanna learned that the Biogen proposal for the VEGF-Trap now included milestone payments - - the payment of success fees after the development had passed certain, pre-defined milestones. The second proposal also increased the amount of cash Biogen proposed in the \$100 million upfront payment to \$50 million in cash and \$60 million in equity.

32. Biogen sent its second proposal to Regeneron on August 15, 2003

33. On August 21, Hanna and Biogen's head of business development then made their presentation concerning the VEGF-Trap proposal to Biogen's Board of Directors.

34. Following the August 21 meeting, negotiations between Regeneron and Biogen continued.

35. Biogen submitted a third proposal to Regeneron on August 25, 2003.

36. Biogen was awaiting word from Regeneron about its proposal when Regeneron announced on September 8, 2003 that Regeneron and Aventis, SA had struck a deal.

**C. Hanna Bought Regeneron Stock Prior to the September 8th Announcement**

37. On August 18, 2003, Hanna placed a limit order to buy 15,000 shares of Regeneron common stock at a price of \$13.95. On August 18, however, Hanna purchased only 7,500 shares in connection with the limit order.

38. The following day, on August 19, Hanna placed a market order and purchased an additional 10,000 shares of Regeneron stock at \$14.15 per share.

39. From June to September 2003, Regeneron stock traded in the range of \$12.43 to \$18.53 per share. In the three weeks before the Announcement, however, Regeneron's stock

closing sales price steadily rose from \$14.11 per share on August 18, 2003 to \$16.88 per share on Friday, September 5, 2003.

40. At 5:30 a.m. on Monday, September 8, 2003, Regeneron and Aventis, SA announced that the two companies had entered into an agreement to develop and market Regeneron's VEGF-Trap.

41 Following this announcement, the price of Regeneron stock opened at \$21.00 per share, \$4.12 higher than the previous day's close of \$16.88

42 On September 9, 2003, one day after the September 8<sup>th</sup> Announcement, Hanna sold all 17,500 shares of Regeneron stock at \$21.15 per share, realizing a profit of \$124,000.

### **CLAIM FOR RELIEF**

(Fraud in Connection With the Purchase and Sale of Securities in

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

43. Paragraphs 1 through 42 are hereby realleged and incorporated by reference.

44 Hanna, directly and indirectly, by use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of Regeneron securities, knowingly or recklessly, has: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of the securities referenced above.

45 As set forth above, Hanna knowingly or recklessly purchased Regeneron stock while in possession of material, nonpublic information. In so doing, Hanna breached his duty to his employer, Biogen, and the source of the confidential information, Regeneron.

46. By reason of the foregoing, Hanna has violated, and, unless enjoined, will again violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

### **RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

Enter a Final Judgment of Permanent Injunction permanently restricting and enjoining Hanna, and his agents, servants, employees, attorneys, attorneys in fact, and those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder.

### II

Enter a Final Judgment ordering Hanna to disgorge an amount equal to the funds and benefits that he obtained illegally as a result of the violations alleged herein, plus prejudgment interest

### III

Enter a Final Judgment ordering Hanna to pay civil money penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]

IV.

Enter a Final Judgment pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)] permanently prohibiting Hanna from serving as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. §781] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)].

V.

Grant such other and further relief as the Court may deem just and appropriate.

Dated: April 20, 2005  
New York, New York



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