

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65247 / September 1, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14524

In the Matter of

SEQUENOM, INC.

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 Sequenom, Inc. (“Sequenom” 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 it and the subject matter of these proceedings, which are admitted, 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:

Summary

These proceedings arise out of Sequenom's disclosure of materially misleading scientific data regarding a prenatal screening test for Down syndrome (the "Down Syndrome Test" or "Test"). Between June 2008 and January 2009, Sequenom made a series of announcements and filings with the Commission regarding the Down Syndrome Test, indicating that the Test was close to 100% accurate and that it would be ready for commercial use by June 2009. The company's stock price rose significantly based on its announcements regarding the Test and statements made by representatives of the company, including Elizabeth A. Dragon ("Dragon"), Sequenom's senior vice president of research and development. Contrary to the company's and Dragon's public statements, the Test was far less accurate than disclosed, making it much less marketable. On April 29, 2009, Sequenom announced that the public could no longer rely on its past announcements regarding the Down Syndrome Test and that the Test would not be launched by June 2009. In response to the April 29 announcement, the company's stock price dropped 76%.

Respondent

1. Sequenom is a Delaware corporation based in San Diego. Sequenom is a diagnostic testing and genetics analysis company whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Its shares trade on The Nasdaq Global Market.

Other Relevant Entities and Persons

2. Elizabeth A. Dragon, PhD resided in Gilbert, Arizona. Dragon had a doctorate in cell biology/virology, and was Sequenom's senior vice president of research and development between May 2006 and September 2009, when she was terminated. On June 2, 2010, the Commission filed a lawsuit against Dragon charging her with violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Dragon died on February 26, 2011.

Background

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.

3. Dragon, an officer of Sequenom, committed fraud by touting the accuracy of Sequenom's Down Syndrome Test when she knew the Test had significant flaws and did not perform well. Specifically, during three public events between June 2008 and January 2009, Dragon presented Test data to analysts and investors and made the following material misrepresentations:

- a. She claimed that the Test was close to 100% accurate on a "blinded" basis. In fact, when the scientists working on the Test ran samples on a blinded basis its rate of accuracy was less than 80%. Consequently, Dragon provided the scientists with the known outcomes of samples so that they could manipulate the results in order to achieve a higher rate of accuracy.
- b. In June 2008, she claimed that 200 samples had been analyzed using the Test when, in fact, only 51 samples had been tested. This inflated number was carried forward with each of her subsequent presentations.
- c. Finally, she claimed that the Test had accurately detected Down syndrome in a blood sample taken during the first trimester of pregnancy. In fact, she knew that the scientists working on the Test repeatedly called this particular sample incorrectly.

4. Sequenom's stock price rose significantly over the course of several months based on the company's positive statements regarding the Test, as well as its announcement that it planned to commercially launch the Test in June 2009. For example, the company's stock was trading at approximately \$7.66 prior to Dragon's first presentation of Test data in early June 2008. By the end of June 2008, the stock was trading at \$15.96, and peaked at just under \$28 in September 2008.

5. In April 2009, Sequenom launched an informal investigation that revealed the fraud. On April 29, 2009, the company announced that the data regarding the Down Syndrome Test had been "mishandled," that the public could no longer rely on the company's prior announcements regarding the Test, and that the Test would not be launched in June 2009. As a result of the announcement, Sequenom's stock price fell 76% from \$14.91 to \$3.62.

6. Following a more thorough investigation conducted by an independent committee of the Board of Directors, on September 28, 2009, Sequenom announced that Dragon and Sequenom's CEO had been terminated, and that the company's CFO and vice president of marketing had resigned as well.

Sequenom's Material Misstatements and Omissions

7. During each presentation that Dragon made, she used slides that included the relevant data, and the information on the slides was used to draft press releases regarding each of the three sets of Test data.

8. Once Sequenom had issued the press releases associated with Dragon's presentations of new Test data, it also filed the data with the Commission in Forms 8-K.

9. The Test data included in Dragon's presentation from January 2009, was used in the company's Form 10-K for the fiscal year ended December 31, 2008. Dragon reviewed the relevant section of the Form 10-K and did not object to the use of the inaccurate data.

10. The material misrepresentations Sequenom made in its filings are as follows:

- a. *June 6, 2008 Form 8-K.* Stated that Sequenom had performed blinded studies on 200 samples, and that the Test was 100% accurate. In fact, the Test had been run in an unblinded manner on only 51 samples, and was less than 100% accurate.
- b. *September 25, 2008 Form 8-K.* Stated that Sequenom had performed blinded studies, was 100% accurate, and had correctly called a Down syndrome sample taken in the first trimester of pregnancy. In fact, the scientists performed unblinded studies. On a blinded basis, the accuracy of the Test was less than 80%, and the scientists made an incorrect call on the first trimester Down syndrome sample. Additionally, the company's disclosure regarding the inflated number of samples tested in June 2008, was carried over to all future disclosures regarding the Test data.
- c. *January 29, 2009 Form 8-K (as amended on February 6, 2009).* Stated that Sequenom had performed blinded studies, and that the Test had correctly called all but one sample, which was a false positive. In fact, the Test had been run on an unblinded basis. On a blinded basis, the Test results included multiple false positive and false negative results.
- d. *March 12, 2009 Form 10-K.* Repeated the misrepresentations from the January 2009 8-K, including the total number of samples tested, the accuracy of the Test, and a statement that the Test had been run on a blinded basis.

Violations

11. As a result of the conduct described above, Sequenom 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. Specifically, between June 2008 and January 2009, Sequenom, through Dragon, an officer of the company, made several materially misleading statements and omissions to the public through public filings, press releases and oral statements.

12. Also as a result of the conduct described above, Sequenom violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission

information, documents, and annual reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

13 Sequenom violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder by filing three Form 8-Ks and an annual report on Form 10-K that contained materially false and misleading statements and omissions regarding the Test data.

Sequenom's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Sequenom cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-11 thereunder.

B. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary