

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69860 / June 26, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3465 / June 26, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15365

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In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS PURSUANT TO RULE
Bruce W. Tomlinson, CPA,	:	102(e) OF THE COMMISSION’S RULES OF
	:	PRACTICE, MAKING FINDINGS, AND
Respondent.	:	IMPOSING REMEDIAL SANCTIONS
	:	
_____	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Bruce W. Tomlinson (“Respondent” or “Tomlinson”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. Tomlinson, age 53 and a resident of Los Altos, California, was the vice president, principal accounting officer, and controller of InterMune, Inc. (“InterMune”), from 2008 to June 2012. He has been licensed as a certified public accountant in the State of California since 1988. His license is currently inactive.

2. InterMune, a Delaware corporation headquartered in Brisbane, California, is a pharmaceutical development company. At all relevant times, InterMune’s common stock was registered with the Commission under Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and traded on The NASDAQ Stock Market. During the relevant period, options in the common stock of InterMune traded on the Chicago Board Options Exchange, the Philadelphia Stock Exchange, the Boston Stock Exchange, the International Securities Exchange, the American Stock Exchange, and the New York Stock Exchange’s Arca System.

3. On June 6, 2013, the Commission filed a complaint against Tomlinson in SEC v. Bruce W. Tomlinson (Case No. 3:13-cv-02549-JCS) in the United States District Court for the Northern District of California. On June 20, 2013, the court entered a consent final judgment against Tomlinson permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, ordering him to pay a civil penalty of \$616,000, and barring him for a period of five years from serving as an officer or director of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d).

4. The complaint alleges that Tomlinson engaged in insider trading by tipping a friend and former business associate, Michael Sarkesian (“Sarkesian”), to material nonpublic information in advance of a December 17, 2010 announcement that the European Medicines Agency’s (“EMA”) Committee for Medicinal Products for Human Use (“CHMP”) had recommended that a European Union (“EU”) commission approve InterMune’s Marketing Authorization Application (“MAA”) for marketing its drug, Esbriet, in the EU. The complaint alleges that by mid-November 2010, in the course of his employment, Tomlinson had become privy

to material non-public information about the increasing probability that the CHMP would render a positive opinion and faster than had been publicly anticipated by InterMune. Tomlinson allegedly tipped Sarkesian that, amongst other things, the European regulatory review process appeared “to be moving faster and better” than anticipated and that this impacted on “Company wide strategic decisions.” According to the complaint, on December 7 and 8, 2010, in advance of the December 17, 2010 announcement, Sarkesian directed the purchase of 400 out-of-the-money InterMune call options which resulted in imputed profits of \$616,000.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Tomlinson’s Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Tomlinson is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent’s work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board (“Board”) in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent’s or the firm’s quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary