

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77383 / March 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17173

In the Matter of

ERIC J. WOLFF,

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 Eric J. Wolff (“Wolff” 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 him and the subject matter of these proceedings, which are admitted, and except as otherwise 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 involves insider trading by Eric J. Wolff in advance of the June 9, 2014 public announcement that Merck & Co., Inc. ("Merck") would submit a tender offer to acquire the outstanding shares of Idenix Pharmaceuticals, Inc. ("Idenix") for \$3.85 billion, or \$24.50 per share, in cash. In May 2014, Wolff obtained material nonpublic information concerning the transaction from Individual A, Wolff's life partner who was a scientist at Merck. Wolff understood that this information was conveyed to him in confidence and that he should not trade on it. However, Wolff misappropriated the information by trading Idenix securities before the public announcement of the transaction and generated ill-gotten gains of \$87,600. By engaging in this conduct, Wolff violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

1. **Wolff**, age 55, is a resident of Newtown, Pennsylvania. At the time of the conduct described herein, Wolff and Individual A resided together and had been life partners for approximately 20 years.

Other Relevant Individual and Entities

2. **Idenix**, a Delaware corporation, is headquartered in Cambridge, Massachusetts. At all relevant times, Idenix's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ. Idenix was a biopharmaceutical company engaged in the discovery and development of drugs for the treatment of human viral diseases. In 2014, Idenix was acquired pursuant to a tender offer.

3. **Merck**, a New Jersey corporation, is headquartered in Whitehouse Station, New Jersey. Merck is a global healthcare and pharmaceutical company. Merck's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

4. **Individual A** was, at all relevant times, a scientist employed by Merck.

Facts

5. In December 2013, representatives of Merck expressed the company's interest in reviewing certain clinical trial data regarding IDX-21437, a drug that Idenix was developing to treat the Hepatitis C virus. On February 28, 2014, Merck and Idenix entered into a confidentiality agreement with respect to Merck's review of the data.

6. In March and April 2014, representatives of Merck and Idenix had discussions regarding their respective companies, Hepatitis C treatments generally, and Idenix's clinical data and development plans for IDX-21437.

7. On May 9, 2014, Merck conveyed an unsolicited offer to Idenix to acquire all of the outstanding shares of Idenix for \$1.5 billion in cash, or \$9.78 per share.

8. On May 13, 2014, Idenix told Merck and two other potential acquirers that Idenix was exploring its strategic alternatives. On May 15, 2014, Merck and Idenix entered into a confidentiality and standstill agreement. From May 15 through June 6, 2014, Merck conducted due diligence on Idenix.

9. By May 18, 2014, substantial steps had been taken in furtherance of Merck's cash tender offer for all of the outstanding shares of Idenix. Idenix and Merck had signed a confidentiality and standstill agreement, and had retained lawyers and financial advisers. In addition, Merck was conducting due diligence on Idenix and had offered to acquire Idenix for \$1.5 billion in cash.

10. On May 23, 2014, Idenix requested Merck and two other potential acquirers to submit proposals with respect to a potential transaction with Idenix by June 3, and Idenix distributed a draft merger agreement to these companies.

11. On June 3, 2014, Merck submitted a proposal to acquire all of the outstanding shares of Idenix at a price per share of \$18.00 in cash. On June 6, Idenix requested that all potential acquirers make final proposals by June 8. On June 8, Merck submitted its final proposal to acquire all of the outstanding shares of Idenix for \$3.85 billion, or \$24.50 per share in cash. Later that day, Idenix's board of directors approved Merck's proposal and Merck and Idenix executed a merger agreement. The transaction was announced before the market opened on June 9.

12. During the course of his employment at Merck, Individual A became aware of material nonpublic information concerning the potential transaction between Merck and Idenix. His duties at Merck involved conducting studies on how drugs metabolize in the body, including drugs made by companies other than Merck. On Sunday, May 18, 2014, Individual A was asked to work on a highly confidential matter regarding Merck's evaluation of another company's drug to treat Hepatitis C. Individual A understood that the project involved a potential business arrangement between Merck and the other company.

13. Wolff and Individual A have a history, pattern, and practice of sharing confidences with each other, including confidential work-related information. Wolff and Individual A discussed the work assignment, Individual A accepted it, and Individual A soon obtained access to documents identifying Idenix as the company that manufactured the drug that he was helping to evaluate.

14. Shortly after May 18, Individual A confirmed to Wolff that the company that owned the drug that Merck was evaluating was Idenix. Based on his own business experience and his conversations with Individual A, Wolff understood that the project on which Individual A was working was a proposed merger or other business transaction, that the information Wolff had in his possession was confidential, and that he should not trade on the information.

15. However, on May 21, 2014, based on the material nonpublic information that he received from Individual A, Wolff bought 5,000 shares of Idenix stock at \$6.27 per share, for a total cost of \$31,350.

16. Wolff knew or was reckless in not knowing that this securities transaction was in breach of the duty of trust or confidence that he owed to Individual A.

17. Prior to the opening of the market on Monday, June 9, 2014, Idenix and Merck issued a joint press release announcing the execution of a merger agreement and a forthcoming tender offer by Merck to acquire all of the outstanding shares of Idenix for \$3.85 billion in cash, or \$24.50 per outstanding share. On the day of the public announcement, the price of Idenix stock rose sharply and closed at \$23.79 per share, which was approximately 229% above the prior trading day's closing price of \$7.23 per share. The volume of trading in Idenix stock rose approximately 3,762%, from 1.09 million shares on June 5 to 41.11 million shares on the day of the announcement.

18. As a result of the price increase, Wolff generated profits of \$87,600.

Violations

19. As a result of the conduct described above, Wolff violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Wolff cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent Wolff shall, within 10 days of the entry of this Order, pay disgorgement of \$87,600, prejudgment interest of \$657, and a civil money penalty in the amount of \$87,600, for a total of \$175,857, 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600; if timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 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 Eric J. Wolff 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 Kelly L. Gibson, Assistant Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

C. 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.

Brent J. Fields
Secretary