

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78938 / September 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17579

In the Matter of

FRANK P. BARUCCI

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 Frank P. Barucci (“Frank P.” 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 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 finds¹ that:

Summary

1. This matter involves trading by Frank S. Barucci ("Frank S.") and Frank P. Barucci in advance of the May 6, 2015 announcement that Alexion Pharmaceuticals, Inc. ("Alexion") would submit a tender offer to acquire the outstanding shares of Synageva BioPharma Corp. ("Synageva") in a deal valued at \$8.4 billion net of cash (the "Transaction"). In March 2015, Frank S. learned material nonpublic information concerning the Transaction from Individual A, who at the time was an Alexion employee. Frank S. obtained this information in confidence and knew that he should neither trade on the information nor disclose it. Frank S. misappropriated the information by both trading Synageva securities and tipping his father, Frank P., before the public announcement of the Transaction. Frank S. generated ill-gotten gains of \$40,355.85 and Frank P. generated ill-gotten gains of \$31,330.50. By engaging in this conduct, Frank S. and Frank P. violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

2. **Frank P. Barucci**, age 76, is a resident of Branford, Connecticut and Deerfield Beach, Florida.

Other Relevant Individuals and Entities

3. **Frank S. Barucci**, age 51, is a resident of Fairfield, Connecticut.

4. **Individual A** was, at all relevant times, the executive assistant to a senior Alexion executive.

5. **Alexion**, a Delaware corporation with its principal place of business in Cheshire, Connecticut, is a pharmaceutical company. Alexion's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the NASDAQ.

6. **Synageva**, at all times relevant to the conduct described herein, was a Delaware corporation with its principal place of business in Lexington, Massachusetts. Synageva was a pharmaceutical company whose common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ.

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.

Background

7. On February 18, 2015, Alexion's Chief Executive Officer and Chairman of its Board of Directors contacted the Chairman of Synageva's Board of Directors and communicated Alexion's interest in acquiring Synageva for \$175 per share. On March 5, 2015, Synageva informed Alexion it was not interested in pursuing a transaction as outlined in the February 18, 2015 communications.

8. Alexion continued to pursue the transaction, however, and on March 9, 2015, Alexion and Synageva entered into a confidentiality agreement. Thereafter, Synageva shared certain information with Alexion, and Alexion responded by increasing its offer to \$195 a share on March 17, 2015. Synageva rejected this offer on March 18, 2015, and Alexion responded by increasing its offer to \$212 per share on March 24, 2015.

9. Although Synageva did not find the \$212 per share offer sufficiently compelling to enter into a transaction, Synageva did believe that it warranted furnishing additional information to Alexion, and on March 26, 2015, Synageva so informed Alexion. As a result, Synageva opened a virtual data room so that Alexion could review certain confidential information, and also arranged an in-person meeting between senior Alexion and Synageva management, which took place on March 30, 2015.

10. On April 16, 2015, Alexion communicated its interest in acquiring Synageva for \$230 per share, an offer that Synageva ultimately accepted.

11. During the course of her employment at Alexion, Individual A became aware of material nonpublic information concerning the Transaction. Following Synageva's positive response to Alexion's proposed deal terms on Thursday, March 26, 2015, Individual A was involved in the expedited planning of a meeting that was to occur between senior Alexion and Synageva management the following Monday, March 30, 2015, at a hotel in Newton, Massachusetts. The Alexion team and their investment bankers were scheduled to arrive in Massachusetts on Sunday, March 29, 2015, for a planning meeting prior to the following day's events. From Friday, March 27, 2015 to Monday, March 30, 2015, Individual A was responsible for arranging hotel rooms, transportation, meeting space, dining arrangements, and other logistics. This last minute event planning required that Individual A work over the weekend. Frank S. learned of the Transaction due to his close personal relationship with Individual A and understood that the information was material and nonpublic.

12. Frank S. and Individual A have had a multi-year close personal relationship and have a history, pattern, and practice of sharing confidences with each other.

13. After learning the information relating to the Transaction, Frank S. tipped his father, Frank P., regarding the Transaction. Frank S. knew or was reckless in not knowing that the tipping was in breach of a duty of trust or confidence that he owed to Individual A.

14. On March 30, 2015, Frank P. instructed his broker to buy 300 shares of Synageva stock with a purchase price of approximately \$30,000 while knowingly possessing material nonpublic information concerning the Transaction. The purchase was uncharacteristic for Frank P. in that he had no history of trading Synageva securities, no recent investments in pharmaceutical companies, no recent individual equity purchases, and no other recent account activity of any kind. In fact, for more than two years prior to the Synageva trade, his account only held diversified mutual funds and cash. Additionally, the Synageva stock was purchased using margin, yet no other securities in the account were held on margin prior to the Synageva purchase.

15. Frank P. knew Individual A, knew that Individual A was an Alexion employee, and knew that his son, Frank S., had a close personal relationship with Individual A. Frank P. knew that the recommendation to buy Synageva securities was based on material nonpublic information concerning the Transaction, knew or had reason to know that the information was provided to him in breach of a duty of trust or confidence, and bought Synageva stock while knowingly possessing the information.

16. From April 13, 2015 to May 1, 2015, Frank S. accumulated 385 Synageva shares with a cumulative purchase price of over \$38,000. During that same period of time, Frank S. made four deposits into his brokerage account. Before he became aware of the material nonpublic information, Frank S. had no recent deposits, no recent securities transactions, and his account value was under \$7,000.

17. On May 1, 2015, Frank S. spoke with a representative at his brokerage firm. Although he had deposited \$50,000 that day, not all of the funds were immediately available for investment. Frank S. called his brokerage firm to determine whether it was possible to trade immediately using the held funds, stating “I need the 23 [thousand dollars] available right now.” Frank S.’s account activity and sense of urgency was a marked departure from his normal course of conduct.

18. Frank S. and Frank P. have a close father-son relationship that includes spending time together on a regular basis as well as speaking by phone. Additionally, Frank S. and Frank P. have a family owned plumbing business where they both have financial interests. In providing the information concerning the Transaction to Frank P., Frank S. intended to benefit him.

19. Before the market opened on May 6, 2015, Alexion and Synageva issued a joint press release announcing the merger agreement and plan to file a tender offer statement whereby Alexion would acquire Synageva’s shares for \$115 in cash and .6581 Alexion shares for each Synageva share, implying a total per Synageva share value of \$230. Synageva’s previous day closing price, on May 5, 2015, was \$95.87, thus the Transaction price represented a 139.9% premium over the prior day’s closing price. Based on the news, Synageva stock opened at \$215.08 on May 6, 2015 and closed at \$203.39, a one-day increase of 112.15% based on the closing price.

20. Frank S. earned a profit of \$40,355.85 from his Synageva trading described above.

21. Frank P. earned a profit of \$31,330.50 from his Synageva trading described above.

22. As a result of the conduct described above, Frank S. and Frank P. 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, and Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit fraudulent conduct in connection with a tender offer.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Frank P. 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. Frank P. shall, within 10 days of the entry of this Order, pay disgorgement of \$31,330.50, prejudgment interest of \$897.18, and a civil money penalty in the amount of \$31,330.50 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 a 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 Frank P. as the 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 Jay A. Scoggins, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

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