

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78939 / September 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17580

In the Matter of

VIJAY S. RAJAN

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 Vijay S. Rajan (“Rajan” 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 insider trading by Respondent and Syed A. Hashim ("Hashim") 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 April 2015, Respondent obtained material nonpublic information concerning the Transaction from his then employer, Alexion. Respondent either knew, or was reckless in not knowing, that this information was conveyed to him in confidence and that he was neither permitted to trade on it nor to disclose it to anyone who was not already authorized to receive it. Notwithstanding these restrictions, Respondent traded both Alexion and Synageva securities before the public announcement of the Transaction, and also encouraged Hashim to trade Synageva securities. Hashim received information that he knew or was reckless in not knowing was material and nonpublic, and that he knew or had reason to know was provided to him in breach of a duty of trust or confidence, yet he nonetheless traded on the information. Respondent generated ill-gotten gains of \$10,032.10 and Hashim generated ill-gotten gains of \$35,747.91. By engaging in this conduct, Respondent and Hashim violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

2. **Rajan**, age 45, is a resident of Bolingbrook, Illinois. At the time of the conduct described herein, Respondent was an Alexion information technology executive.

Other Relevant Individuals and Entities

3. **Hashim**, age 51, is a resident of Alpharetta, Georgia.

4. **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.

5. **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

6. 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.

7. 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.

8. 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.

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

10. During the course of his employment at Alexion, Respondent became aware of information concerning the Transaction. On Sunday, April 19, 2015, an Alexion employee informed Respondent by email that Respondent was going to be working on a highly confidential project. The email advised Respondent of his duty to keep the information confidential, even within Alexion, and to refrain from trading the securities of either Alexion or an entity with the code name "Saturn," which he learned was Synageva, while in possession of the information. Additionally, at the outset of his employment, Respondent signed a confidentiality agreement where he agreed not to trade in the securities of any company while he was aware of nonpublic information concerning the possible acquisition of that company, and he also agreed not to disclose that information to any person outside Alexion. Respondent either knew or was reckless in not knowing that the information concerning the Transaction was material and nonpublic.

11. Respondent's supervisor, who was copied on the email, called and briefly spoke to Respondent two minutes after they both received the email on Sunday, April 19, 2015. There was a confidentiality agreement and trading restriction acknowledgement attached to the email, which Respondent signed and returned on Monday, the following day.

12. Eleven minutes after speaking to his supervisor, Respondent called Hashim. During one or more conversations that day, and in an ensuing series of telephone conversations over the following two days, circumstantial evidence indicates that Respondent encouraged

Hashim to buy Synageva securities. Hashim knew or was reckless in not knowing that the recommendation to buy Synageva securities was based on material nonpublic information concerning the Transaction and either knew or had reason to know that it was provided to him in breach of a duty of trust or confidence.

13. Hashim placed orders to buy Synageva stock in two different online brokerage accounts on Sunday, April 19, 2015, after speaking with Respondent, and while knowingly possessing material nonpublic information. The buy orders were for a cumulative amount of 200 shares with a purchase price of over \$20,000.

14. On April 20, 2015, Respondent purchased 100 shares of Synageva stock for approximately \$10,000. Respondent also purchased 25 shares of Alexion stock on April 20, 2015 for approximately \$5,000.

15. On April 21, 2015, Hashim transferred \$16,000 into one of his brokerage accounts and placed an order to purchase an additional 150 Synageva shares, comprising the entire amount transferred into the account. Following the transfer, he spoke by telephone with a representative at his brokerage firm and stated: "I want to execute a trade right now and I might be short of funds so I'm transferring \$16,000 from my checking account but it says that this will be available three days from now but I need it immediately because I wanted to make a trade right now."

16. The Synageva purchase was uncharacteristic for Respondent in that he had no history of trading Synageva securities.

17. The Synageva purchase was uncharacteristic for Hashim, who had no history of trading Synageva securities and accumulated a Synageva position that was more than 300% larger than any other position recently held in his brokerage account.

18. Respondent and Hashim were friends and former colleagues, having previously worked together at a large technology company. They had a meaningfully close relationship and have a history of providing networking benefits to each other. For instance, Hashim first introduced Respondent to a contact at Alexion, an introduction that ultimately resulted in Respondent's employment at Alexion. Subsequently, after Respondent started working at Alexion, he assisted Hashim in applying to Alexion, where Hashim was interviewed but ultimately not hired. Circumstantial evidence indicates Respondent intended to benefit Hashim by providing the information concerning the Transaction to him.

19. By purchasing Synageva stock and encouraging another to purchase Synageva stock, Respondent knowingly or recklessly violated the confidentiality agreement that he received at the outset of his employment and the confidentiality agreement he received in the April 19, 2015 email.

20. By purchasing Alexion stock, Respondent knowingly or recklessly violated the confidentiality agreement that he received at the outset of his employment, the confidentiality

agreement he received in the April 19, 2015 email, and a trading blackout issued by Alexion in connection with its first quarter 2015 earnings announcement.

21. 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.

22. On May 6, 2015, Respondent sold his entire Synageva position for a profit of \$10,032.10.

23. On May 6, 2015, Hashim sold his entire Synageva position for a profit of \$35,747.91.

24. As a result of the conduct described above, Respondent and Hashim 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 Rajan's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Rajan 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 shall pay disgorgement of \$10,032.10, prejudgment interest of \$322.13 and civil penalties of \$27,906.06 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). Payment shall be made in the following installments:

- (1) \$11,478.09 within 10 days of the entry of the Order;
- (2) \$8,927.40 within 120 days of the entry of the Order;
- (3) \$8,927.40 within 240 days of the entry of the Order; and
- (4) \$8,927.40 plus interest on the payments described in Section IV.B(1)-(4) pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. § 3717 within 365 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 Rajan 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