

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86690 / August 15, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19355

In the Matter of

LORENZ ERNE,

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 Lorenz Erne (“Erne” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 finds that:

Summary

1. This matter involves insider trading by Erne, a former senior executive with F. Hoffmann-La Roche AG (“Hoffmann-La Roche”), a Swiss pharmaceuticals and diagnostics

company, the parent company of which is Roche Holding Ltd (“Roche”). Erne purchased common stock of Spark Therapeutics, Inc. (“Spark”), a Philadelphia-based gene therapy company, ahead of a February 25, 2019 announcement that a Roche affiliate company and Spark had entered into a merger agreement. Erne traded while in possession of material, nonpublic information that he learned in the course of his employment at Hoffmann-La Roche. As a result of his trading ahead of the announcement, Erne obtained illicit profits of \$159,228.

Respondent

2. Erne is a Swiss national and was employed by Hoffmann-La Roche for over 25 years until March 2019. At the time of his illicit trading, he was Head of the Strategy Office at Roche Global Technical Operations in the Pharmaceuticals Division. Prior to that, he was Head of Network Strategy. In his employment, Erne focused on the areas of supply chain, operations management, and forecasting.

Relevant Entities

3. Roche is the parent company of a group of healthcare subsidiaries and is headquartered in Basel, Switzerland. The group operates worldwide under two divisions: Pharmaceuticals and Diagnostics. Roche has bearer shares and non-voting equity interests listed on the SIX Swiss Exchange under the ticker symbols “RO” and “ROG.” Roche American Depository Receipts (“ADRs”) trade on the OTCQX operated by OTC Markets Group, Inc. under the ticker symbol “RHHBY.” According to Roche’s public filings, the depository bank for its ADRs is JPMorgan Chase Bank, N.A., headquartered in New York.

4. Spark is a Delaware corporation with its principal executive offices in Philadelphia. Spark is a gene therapy company, and its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Global Select Market under the ticker symbol “ONCE.”

Facts

5. In the spring of 2018, Roche was evaluating a possible acquisition of certain gene therapy companies, including Spark. Spark’s public release of certain clinical trial results in mid-2018 increased Roche management’s interest in a possible business combination.

6. In the spring and summer of 2018, in the course of his employment, Erne participated in presentations about possible acquisition targets. The material discussed in these presentations was material and nonpublic.

7. Between July 2018 and February 2019, Roche took substantial steps to commence a tender offer for the common stock of Spark. In July 2018, the Roche Board of Directors was first informed about a potential acquisition of Spark, and Roche assigned a codename to the potential transaction. Also in July 2018, Erne executed a Roche Insider Declaration related to

Roche's possible acquisition of Spark. The Insider Declaration specifically prohibited Erne from using inside information that he obtained from his employer to purchase or sell securities for his benefit or through him for the benefit of other persons.

8. During the fall of 2018, Erne had at least one discussion at Roche concerning due diligence regarding a possible collaboration with, or a possible acquisition of, Spark.

9. On September 21, 2018, while in possession of material, nonpublic information regarding a possible Roche business combination with Spark, Erne purchased 600 shares of Spark common stock through a Swiss brokerage account that he controlled.

10. Erne knew that the information regarding a possible Roche business combination with Spark was material, nonpublic information that he had acquired from Roche and that trading on the basis of that information breached a duty and violated Roche's policies prohibiting insider trading.

11. In December 2018, Roche informed Spark of its interest in exploring a potential acquisition and sent Spark a non-binding proposal to acquire all of the outstanding shares of Spark common stock, subject to completion of due diligence and the negotiation and execution of definitive agreements. In early February 2019, Spark provided Roche with access to a virtual data room in order for Roche to perform its due diligence.

12. At some point prior to February 19, 2019, Erne participated in another Roche presentation at which the participants were told that Roche intended to pursue a Spark acquisition. On February 19 and 20, 2019, while in possession of material, nonpublic information regarding a possible acquisition of Spark by Roche, Erne purchased a total of 2,000 shares of Spark common stock through the Swiss brokerage account he controlled.

13. Erne knew that the information regarding a possible Spark acquisition was material, nonpublic information that he had acquired from Roche and that trading on the basis of that information breached a duty and violated Roche's policies prohibiting insider trading.

14. On February 25, 2019, prior to the open of the U.S. securities markets, Roche and Spark announced that they had entered into an Agreement and Plan of Merger whereby Roche would commence a tender offer for all the outstanding shares of Spark common stock at a price of \$114.50 per share in cash. That per share price represented a premium of 122% to Spark's closing price on the previous trading day.

15. The day of the announcement, Spark's common stock closed at \$113.48 per share, 120% higher than the previous trading day's close. Trading volume in Spark common stock increased approximately 3000% from the previous day.

16. As a result of his trading in Spark common stock ahead of the February 25 announcement, Erne received illicit profits of \$159,228.

17. On March 7, 2019, Roche filed with the Commission a Tender Offer Statement on Schedule TO, pursuant to the Agreement and Plan of Merger.

18. In early March 2019, in connection with a Financial Industry Regulatory Authority review of trading in Spark ahead of the February 25 announcement, Roche's legal department requested information from Roche employees.

19. After receiving the request, Erne reported his Spark securities purchases to Roche's legal department. Shortly thereafter, Erne reported his Spark trading to the Commission staff and provided the Commission staff with information and documents regarding his trading.

20. As a result of the conduct described above, Erne 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.

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

Respondent's Cooperation

In determining to accept the Offer, the Commission considered Respondent's cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Erne 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 Exchange Act Rules 10b-5 and 14e-3.

B. Respondent Erne shall, within 14 days, pay disgorgement of \$159,228 with no prejudgment interest and a civil money penalty of \$79,614 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 is not made, interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of the civil money penalty is not made, 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 Lorenz Erne 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 Associate Director Carolyn Welshans, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$79,614, based on his cooperation in a Commission investigation and related enforcement proceeding. 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 with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (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.

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.

Vanessa A. Countryman
Secretary