



U.S. Department of Justice

*United States Attorney
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August 26, 2014

By Electronic Mail

Honorable Brenda P. Murray
Chief Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

Re: *In the Matter of STEVEN A. COHEN*, Administrative Proceeding File No. 3-15382

Dear Judge Murray:

Pursuant to the Court's Orders dated August 8, 2013, March 4, 2014, and May 29, 2014, the United States Attorney's Office for the Southern District of New York (the "U.S. Attorney") writes to update the Court with respect to its continued request to stay the proceedings in the above-captioned matter based on ongoing criminal proceedings. The U.S. Attorney respectfully submits that the stay should continue in effect because certain of the criminal proceedings that originally warranted a stay of the administrative action remain ongoing.

In its original application for a stay of administrative proceedings, the U.S. Attorney identified three pending criminal prosecutions with facts that substantially overlapped with the allegations of the United States Securities and Exchange Commission in the Order Instituting Proceedings ("OIP"). The OIP alleges that respondent Steven A. Cohen, the founder of a group of affiliated hedge funds (collectively, the "SAC Hedge Fund" or "SAC"), failed to reasonably supervise two portfolio managers, Mathew Martoma and Michael Steinberg, who were alleged to have engaged in insider trading in violation of Title 15, United States Code, Section 78j(b) and Title 17, Code of Federal Regulations, Section 240.10b-5. At the time of the OIP, Martoma and Steinberg had been criminally charged with engaging in the insider trading activity upon which the failure to supervise allegations are premised. *See United States v. Martoma*, 12 Cr. 973 (PGG) and *United States v. Steinberg*, 12 Cr. 121 (RJS). Additionally, shortly after the OIP was filed, the U.S. Attorney brought criminal charges against the four corporate entities owned by Mr. Cohen that were responsible for managing the assets of the SAC Hedge Fund (collectively, the "SAC Hedge Fund Entities"). *See United States v. S.A.C. Capital Advisors, L.P., et al.*, 13 Cr. 541 (LTS). The criminal charges against the SAC Hedge Fund Entities were based in part on the alleged insider trading of Martoma and Steinberg, among several other employees.

On August 8, 2013, this Court issued an order granting a complete stay of proceedings "pending resolution of *Martoma, Steinberg, and S.A.C. Capital Advisors, L.P.*" (August 8, 2013 Order at 3). On November 29, 2013, March 4, 2014 and again on May 29, 2014, following

updates as to the status of the criminal prosecutions, the Court continued the stay based on the information provided by the U.S. Attorney.

At present, only one of the three matters referenced in the Court's prior order – the case against *S.A.C. Capital Advisors, L.P., et al.* – has been fully resolved. As the Court is aware, the four SAC Hedge Fund Entities pled guilty to insider trading charges on November 8, 2013. Subsequently, on April 10, 2014, the District Court accepted those guilty pleas and sentenced the SAC Hedge Fund Entities to, among other things, a five-year term of probation and a \$900 million fine (in addition to the \$284 million penalty previously imposed in connection with the civil forfeiture action). No appeal was taken.

The two other matters underlying the U.S. Attorney's request for a stay – the *Martoma* and *Steinberg* cases – remain ongoing. First, with respect to *Martoma*, the defendant was convicted after trial on February 6, 2014, but has yet to be sentenced. The sentencing hearing was previously scheduled for June 10, 2014, but has since then twice been adjourned and is now scheduled for September 8, 2014.

Second, proceedings in the *Steinberg* case are also continuing. The defendant, who was convicted of all counts on December 18, 2013, and thereafter sentenced on May 16, 2014 to a 42-month term of imprisonment, filed a notice of appeal to the United States Court of Appeals for the Second Circuit. The defendant has made clear that one of his primary arguments on appeal will be that the offense of insider trading requires a tippee to know that the insider who supplied material, non-public information did so in exchange for a benefit, and that there was insufficient proof to establish this element at trial. This precise legal issue – whether a tippee must know of the benefit (in addition to knowing of a breach of duty) – is a central question in a separate appeal brought by two of Steinberg's co-conspirators, Todd Newman and Anthony Chiasson.¹ That appeal, which has been fully briefed and was argued on April 22, 2014, remains pending before the United States Court of Appeals for the Second Circuit. *See generally United States v. Todd Newman & Anthony Chiasson*, Docket Nos. 13-1837(L), 13-1917(con) (the "*Newman/Chiasson Appeal*"). Steinberg sought and obtained a stay to the briefing schedule governing his own Second Circuit appeal until the *Newman/Chiasson Appeal* is decided.

On May 15, 2014, the District Court in the *Steinberg* case issued its decision denying the defendant's motion for a judgment of acquittal and rejecting his argument that the law requires proof of his knowledge of a benefit conferred upon the tipper. *See United States v. Steinberg*, No. 12 Cr. 121 (RJS), 2014 WL 2011685, at *9 (S.D.N.Y. May 15, 2014). In so doing, the District Court "acknowledge[d] the possibility that the Second Circuit may change course and require a new knowledge-of-benefit element" in insider trading cases, but "[u]ntil then, however, the Court must follow precedent as it is written," which does not require a "jury . . . [to] find any knowledge of the tippers' benefits beyond what [is] necessary to find knowledge of the tippers' breaches." *Id.* at *7-*8.

¹ Newman and Chiasson were portfolio managers at different hedge funds who obtained the same material, nonpublic information that Steinberg also received. Newman and Chiasson were convicted in a separate trial that took place in the Southern District of New York in November and December of 2012.

In view of these circumstances, the U.S. Attorney respectfully submits that the continued stay of the above-captioned administrative proceeding remains necessary until at least the Second Circuit issues a decision in the *Newman/Chiasson* Appeal.

Pursuant to the Court's August 8, 2013 Order, the U.S. Attorney will provide a further update as whether a stay remains warranted on or before November 26, 2014, or earlier should the *Newman/Chiasson* Appeal be decided before that time.

Respectfully submitted,

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By: _____ /s/_____
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