

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 10-cv-9560 (GBD)
	:	
QUORNE LIMITED and MICHAEL SARKESIAN,	:	ECF
	:	
Defendants.	:	

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**AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

**SUMMARY OF THE ACTION**

1. This is an insider trading case involving transactions in the securities of InterMune, Inc. in advance of a December 17, 2010 public announcement that its development drug, Esbriet, had been recommended for approval by the European Medicines Agency's Committee for Medicinal Products for Human Use ("CHMP"). In the days before this announcement, Defendants purchased, or caused to be purchased, 400 InterMune call options on the basis of material nonpublic information concerning a positive opinion for Esbriet by CHMP, disclosed in breach of a fiduciary duty to keep the information confidential. After the announcement, the market price of the 400 InterMune options increased by more than 500%, after which they were sold by Defendants.

2. By engaging in the conduct set forth herein, Defendants violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5

thereunder [17 C.F.R. § 240.10b-5]. The Commission seeks an injunction against future violations; disgorgement of ill-gotten gains; and civil penalties.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to Sections 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1, and 78aa]. The Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Amended Complaint.

4. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts, practices, transactions and courses of business constituting the violations occurred in the Southern District of New York.

### **DEFENDANTS**

5. Quorne Limited (“Quorne”) is a British Virgin Islands limited liability company whose sole shareholder is a Cyprus trust, the sole beneficiary of which is an individual related to Defendant Michael S. Sarkesian.

6. Michael S. Sarkesian (“Sarkesian”), age 52, is a resident and citizen of Switzerland who, pursuant to a limited power of attorney from Quorne, is authorized to manage and administer Quorne’s funds, securities, and other assets held in an account in Switzerland.

### **RELEVANT ENTITIES AND BACKGROUND FACTS**

7. InterMune, Inc. is, and was during the relevant period, a Delaware corporation headquartered in Brisbane, California, focused on developing and commercializing pharmaceutical therapies in the fields of pulmonology and hepatology. Its common stock is, and was during the relevant period, registered under Section 12(b) of the Exchange Act and listed on

The NASDAQ Stock Market, trading under the symbol ITMN. Options in InterMune's common stock traded on the Chicago Board Options Exchange, the Philadelphia Stock Exchange, the Boston Stock Exchange, and the following exchanges located in New York, New York: NYSE Amex operated by NYSE Amex LLC, NYSE Arca operated by NYSE Arca, Inc., and the International Securities Exchange.

8. In March 2010, InterMune announced that it had submitted a Marketing Authorization Application to the European Medicines Agency ("EMA"), seeking regulatory approval from the European Union ("EU") to market InterMune's developmental drug Esbriet for the treatment of patients with idiopathic pulmonary fibrosis ("IPF"). IPF is a debilitating and ultimately fatal lung disease that inflames and scars the lungs through the buildup of fibrous tissue, causing a patient to lose the ability to transfer oxygen into the bloodstream, such that unless the patient can undergo a successful lung transplant, he or she eventually dies of the disease. In 2010 during the pendency of InterMune's application to the EMA, there were no medicines or other effective treatments approved in Europe (or the U.S.) for IPF's treatment.

9. The EMA is responsible for the evaluation and supervision of human and veterinary medicines developed for use in the EU, and six scientific committees, composed of representatives from EU countries, conduct the bulk of its evaluative work. One of these committees is CHMP, which describes itself as responsible for preparing the EMA's opinions on all questions concerning medicines for human use in the EU.

10. On December 17, 2010, before the opening of the U.S. securities markets, InterMune issued a press release announcing that CHMP had adopted a positive opinion recommending the granting of a marketing authorization for Esbriet. According to the announcement, once CHMP issues a positive opinion it is forwarded to the European

Commission for ratification, which typically occurs within two to three months and thereafter results in a drug being marketable in all 27 EU countries.

11. After InterMune's public announcement, and the opening of the New York securities markets, the price of InterMune's stock rose materially, approximately 144% during a single trading day, from the previous day's close of \$14.27, to close at \$34.89.

#### **FACTUAL ALLEGATIONS RELATING TO INSIDER TRADING**

12. Before the December 17, 2010 announcement that rocketed InterMune's stock price, there was no public information regarding whether CHMP would reach an opinion on InterMune's Marketing Authorization Application in 2010. CHMP reached its opinion several months more rapidly than is typical for EMA Marketing Authorization Applications. Before December 17, 2010, InterMune consistently stated publicly that a decision on the application would occur in 2011, not in 2010. Also, as indicated by the market's dramatic reaction to the December 17 announcement, the public lacked sufficient information to predict the outcome of CHMP's review of the InterMune application. Both InterMune and the EMA (inclusive of CHMP) had policies that prohibited its employees and other agents from disclosing details surrounding the status of InterMune's application, including any nonpublic communications between InterMune and the EMA concerning InterMune's Marketing Authorization Application.

13. On or before December 5, 2010, Defendant Sarkesian obtained material nonpublic information concerning a positive opinion for Esbriet and thereafter emailed Quorne's broker in Switzerland to investigate the purchase of securities in InterMune.

14. On December 7 and 8, 2010, using his power of attorney authority to manage and administer Quorne's funds, and obtaining the approval of Quorne's only shareholder, Sarkesian caused Quorne to purchase 400 call option contracts on InterMune stock. A "call option

contract” entitles a purchaser, in exchange for a premium, to buy a specified number of units of an underlying security or commodity at a specified price within a specified time period (i.e., up to a specified expiration date). It gives the purchaser the right to “call in” or buy the stock or commodity, such that profit is made when the underlying stock or commodity increases in price during the specified time period. The purchaser of a call option may also sell the option contracts back into the market prior to the specified expiration date. Using call options as an alternative to investing in the underlying stock or commodity limits the risk of price decline to the cost of the option while ensuring the benefit of a price increase.

15. The call option contracts purchased at Sarkesian’s direction were ultimately executed on the Chicago Board Options Exchange or the Philadelphia Stock Exchange and had a strike price of \$20 and a July 2011 expiration date. The purchases over the two days comprised 100% and 59%, respectively, of the volume of transactions in the series.

16. The material nonpublic information obtained by Sarkesian, after which he caused Quorne to purchase InterMune call options, was disclosed to him for a personal benefit to the source of that information and in breach of a fiduciary duty or duty of trust or confidence to keep the material nonpublic information confidential. Quorne’s purchases of 400 InterMune call options on December 7 and 8, 2010 were made on the basis of that material nonpublic information, which Defendants knew, or should have known, had been obtained from the source of that information in breach of a fiduciary duty or other similar duty of trust or confidence.

17. As with InterMune’s stock price, the market price of the 400 InterMune call options rose dramatically after the December 17, 2010 announcement, increasing in value more than 500%, after which Defendants sold or caused to be sold the 400 call options.

18. As a result of their conduct, Defendants have made an illicit profit attributable to their trading on material nonpublic information of \$616,000.

**CLAIM FOR RELIEF**  
**Violations of Exchange Act Section 10(b) and**  
**Rule 10b-5 Promulgated Thereunder**

19. Paragraphs 1 through 18 are realleged and incorporated by reference.

20. When Defendants purchased, or caused to be purchased, InterMune call options, they were in possession of material nonpublic information concerning a positive opinion for Esbriet and traded on the basis of that information. Defendants knew, or should have known, that the information that they possessed had been communicated to them in breach of a fiduciary or similar duty of trust or confidence owed to another by the source of that information. The material nonpublic information that the Defendants received through this source was disclosed in exchange for a direct or indirect personal benefit to the communicator of the information.

21. By reason of the conduct described above, the Defendants, with scienter, in connection with the purchase or sale of securities, and by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

22. By reason of the foregoing, the Defendants, directly and indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and unless restrained and enjoined will continue to engage in the acts, practices,

transactions, and courses of business alleged in this Amended Complaint, or in acts, practices, transactions, and courses of business of similar purport and object.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court enter judgment:

- (a) permanently enjoining the Defendants from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;
- (b) ordering the Defendants to disgorge all illicit trading profits resulting from the conduct alleged herein;
- (c) ordering the Defendants to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and
- (d) granting such other and further relief as is just and appropriate.

Dated: March 27, 2011

Of Counsel:  
Scott W. Friestad  
Nina B. Finston  
Catherine Whiting

Respectfully submitted,



Kenneth W. Donnelly  
Assistant Chief Litigation Counsel  
100 F Street, N.E.  
Washington, D.C. 20549-5949  
[donnellyk@sec.gov](mailto:donnellyk@sec.gov)  
Telephone: (202) 551-4946  
Facsimile: (202) 772-9282

Attorney for Plaintiff  
Securities and Exchange Commission

**CERTIFICATE OF SERVICE**

I certify that, on March 27, 2012, I caused the foregoing *Amended Complaint* to be served, postage prepaid, by overnight delivery and by email to the following counsel of record:

Charles M. Carberry  
Michael Dailey  
Jones Day  
222 East 41st Street  
New York, New York 10017-6702  
[carberry@jonesday.com](mailto:carberry@jonesday.com)  
[mdailey@jonesday.com](mailto:mdailey@jonesday.com)  
Telephone: (212) 326-3920

Attorneys for Defendants



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Kenneth W. Donnelly